





Government of Oklahoma

by

FREDERICK F. BLACHLY, Ph.D.,

*Professor of Government at the University of Oklahoma
Director of Bureau of Municipal Research, University of Oklahoma
Secretary of Oklahoma Municipal League*

and

MIRIAM E. OATMAN, M. A.

Assistant Secretary of the Oklahoma Municipal League

HARLOW PUBLISHING Co.
Oklahoma City
1924

JK 7125
1924
B4

COPYRIGHT 1924 BY
HARLOW PUBLISHING CO.

JUL 19 1924

©C1A801649

586

/

PREFACE

60

Oklahoma has been a state for seventeen years under the constitution adopted by her people in 1907. The political ideals and principles embodied in that instrument as well as the methods then adopted for making those ideals and principles effective have had time to be tested as to their correctness and practicability. As it is only four years until, under the present constitution, the people must vote upon the holding of another convention, it seems fitting that a rather complete study be made of the government of the state as it now exists.

It will be the purpose of this book to point out in as brief a way as possible what those ideals and principles were, to describe fully the governmental organization, to discuss and criticise both theory and practice in the light of existing conditions, and to make recommendations as to necessary changes.

Any constitution, consisting as it does of the ideas of many men, and involving necessarily many compromises among conflicting ideas, can never be regarded as a completely unified system. Words and phrases in such a document, even at the time of its making, had absolutely different meaning and content in the minds of those responsible for its creation and those voting upon it. Through pressure of conflicting claims before the courts the meanings of these expressions are made somewhat certain or undergo important modifications. Amendments to the constitution along with added court decisions upon them have also modified the original instrument. In a constitution as filled with statutory law as is the one adopted by Oklahoma, it is manifest that ordinary legislative acts will profoundly change its original meaning. The legislature in operating under the constitution or in carrying out instructions found

therein has either augmented or limited the original obvious intent of the instrument. Finally, the provisions of the constitution, as men and women operate them, are continually in the process of change, adjustment and development.

The authors have attempted to give the substance of constitutional provisions dealing with each subject, have analyzed these provisions in the light of a multitude of court decisions, have studied carefully the legislative enactments and court decisions relative thereto and have through observation, talks with many state, city and local officials, and criticisms and suggestions from experts in various lines, tried to find out what the government of the state and its subdivisions really is.

In making criticisms of the present governmental system the authors have attempted to face disagreeable realities as to their state government rather than to avoid them. They have taken the attitude that the government is not a sacred institution but a machine for performing certain necessary social work; if it is not functioning properly it should be examined quite as thoroughly as any other machine failing to work effectively; if the reasons for failure to work properly are found, these reasons should be given the widest possible publicity; that these causes of failure should be discussed as unemotionally as one discusses a poor piece of mechanism in an automobile, all to the end that a really workable governmental machine may be developed. They have tried to eliminate all partisan criticism, have attempted to see and to state both sides of disputed questions, and where criticism has been made have always made concrete suggestions for remedying defects. It has been realized further that the majority of our defects are not the exclusive possessions of the state of Oklahoma, but are more or less common to all states.

The recommendations and suggestions for change have

been made, therefore, not in the view of the experience of Oklahoma alone but from the actual working government in many states. Many of them, it is well realized, will involve fundamental changes in the existing constitution.

No new or startling principles of government have been recommended. All of them have been tested and found workable, either in other states, the national government, or other English speaking countries. The principles of government embraced in the recommendations may be summarized to be: (a) A greater trust in representative government rather than the faith expressed in the present constitution in "direct democracy;" (b) a greater control of governmental planning by the executive as a means of insuring responsibility to the people; (c) the administrative functions of the state placed in a few departments under the control of the governor as a means of securing efficient state administration; (d) establishing a unified court system; (e) the entrusting of certain functions now carried out by the county but state-wide in their nature, to the state; grouping the remaining county functions in a few well coördinated departments under a manager as a means of doing away with the present great cost and inefficiency of county government; and (f) the placing of the city and the county under the administrative control of a local government department in place of the combination of excessive legal control plus the irresponsible, ineffective control of the various unrelated agencies which obtains at the present time.

The extent of the labor involved in preparing such a book, as well as its unremunerative nature, made a certain amount of coöperation necessary. But while the different chapters have been written by several persons, the book stands as a whole, since it has been planned as one unified

piece of work and the writers have constantly conferred with one another in its execution.

Three other persons have coöperated with the authors whose names appear on the title page, in the production of this book. Mr. John H. Bass, A. B., J. D., formerly instructor in the University of Oklahoma and now an attorney for the Federal Trade Commission, has written the chapters on the corporation commission, the initiative and referendum, and, with the assistance of Mr. Merrill, the chapter on the judiciary. Mr. Maurice H. Merrill, A. B., L. L. B., formerly instructor in government in the University of Oklahoma and now a member of the Tulsa bar, has contributed the chapters on the legislature, highways, regulation of business and labor, the care of special classes, and local government. Miss Gladys Dickason, A. B., formerly the Assistant Secretary of the Oklahoma Municipal League, has written the chapter on the executive in Oklahoma.

The possibility of error of statement in analyzing a complex constitution, laws, numbers of which are far from clear, a multitude of court decisions and the daily operations of a governmental machine composed of many parts is great. The authors have tried to eliminate these errors, by thoroughly checking and rechecking one another's work, by comparing carefully the laws of other states where a particular law or court decision in Oklahoma seemed at variance with the general rules, and finally by consultation with many of those actively engaged in governmental operations, those teaching government and those connected with government research agencies. Their number precludes detailed mention here, but their suggestions and criticisms have done much to strengthen this book. For all errors, as well as mistakes of judgment, the authors alone assume all responsibility.

If this work furnishes some informational basis for a

wide and intelligent discussion of the government of our state, and suggests methods which should be considered in working for its improvement, the purpose of the authors in undertaking it will have been fulfilled.

FREDERICK F. BLACHLY,
MIRIAM E. OATMAN.

Norman, Oklahoma,



CONTENTS

Chapters	Pages
I THE CONSTITUTION OF OKLAHOMA	1
II THE STATE LEGISLATURE <i>Maurice H. Merrill</i>	35
III THE CHIEF EXECUTIVE <i>Gladys Dickason</i>	71
IV STATE ADMINISTRATION	126
V THE JUDICIARY <i>J. H. Bass and M. H. Merrill</i>	158
VI THE CORPORATION COMMISSION <i>John H. Bass</i>	187
VII THE ELECTION SYSTEM	230
VIII THE INITIATIVE AND REFERENDUM <i>John H. Bass</i>	273
IX THE TAXATION AND REVENUE SYSTEM	305
X THE FUNDS OF THE STATE	338
XI THE FUNDED DEBT OF THE STATE	376
XII THE APPROPRIATION AND BUDGET SYSTEM	387
XIII REGULATION OF BUSINESS AND LABOR <i>Maurice H. Merrill</i>	401
XIV PUBLIC HEALTH ADMINISTRATION	416
XV AGRICULTURE	438
XVI HIGHWAY ADMINISTRATION <i>Maurice H. Merrill</i>	454
XVII EDUCATION	466
XVIII THE CARE OF SPECIAL CLASSES <i>Maurice H. Merrill</i>	504
XIX LOCAL GOVERNMENT <i>Maurice H. Merrill</i>	513

XX	MUNICIPAL ORGANIZATION	551
XXI	THE LEGAL RELATIONSHIP OF THE CITY TO THE STATE	565
XXII	ADMINISTRATIVE CONTROL OVER OKLAHOMA CITIES	626
XXIII	SUMMARY AND RECOMMENDATIONS	655

GOVERNMENT OF OKLAHOMA

CHAPTER 1

THE CONSTITUTION OF OKLAHOMA

For a proper understanding of the constitution and government of Oklahoma it is necessary to trace in as brief a way as possible the historical background of the state.¹

HISTORICAL SURVEY

The territory now embraced in the state of Oklahoma, except the three counties known as the "Panhandle," was ceded to the United States in 1803 as a part of the Louisiana Purchase. The "Panhandle" was originally Spanish territory, then Mexican, then a part of Texas; but was surrendered by Texas when she entered the Union as a slave state, since it lay north of the Mason and Dixon line, north of which slavery was not to exist. In 1890 Congress made this "No man's land" a part of the Territory of Oklahoma.

The history of the area now known as Oklahoma, from the date of the Louisiana Purchase until the time when it was admitted into the Union, is largely concerned with the relations between white men and Indians. The Indian problem in the present state of Oklahoma had its beginning in the early part of the nineteenth century. Five tribes of Indians, the Cherokees, Chickasaws, Choctaws, Creeks and Seminoles (later called the Five Civilized Tribes) were settled on valuable and extensive lands in Alabama, Florida, Georgia and Mississippi. By treaty with the Federal Government, they were to have undisturbed possession of their lands and property. The whites, coveting these rich unde-

¹For a more detailed account, see Alley and Blachly—*Elements of Government*, pp. 209-268. The best and most complete account is found in Dr. Roy Gittinger's *The Formation of the State of Oklahoma*.

veloped tracts, wished to remove the Indians. The Louisiana Purchase seemed to open a way for a solution of these Indian problems.

In 1808 delegates from the Cherokee Nation asked permission to move into the new territory beyond the Mississippi, and by 1817 the tribe had concluded a treaty with the United States, which gave them lands in what is now the northeastern part of Arkansas. Later these Indians were transferred to Oklahoma. In 1820 a treaty was made with the Choctaws whereby they received land that now lies within the boundaries of Oklahoma. This marks the beginning of a long continued movement to establish Oklahoma as an Indian country. Its boundaries were not exactly defined at first, but they became more definite as neighboring territories and states were formed out of the great unorganized lands. By various means, fair and foul, and by sundry treaties, the Five Civilized Tribes of Indians had all been moved here by the time of the Civil War and were occupying almost the whole of what is now Oklahoma.

At the beginning of the Civil War, the Indians in this territory preferred to remain neutral, but, owing to circumstances over which they had little control, they were forced to take sides with the Confederates. Not only did their location naturally place them within the area of the Southern Confederacy, but they were practically abandoned by the Federal Government, while the Confederacy directed its attention toward securing power over them. Early in 1861 the Federal troops were withdrawn from the military posts in the Indian Territory, with the result that the Confederate forces moved in and by persuasion and compulsion induced many of the Indians to acknowledge the authority of the Confederate States and to ally themselves with the South.

It is impossible to say to what extent the members of

the various tribes acquiesced in the treaties made by their leaders; all of the evidence seems to show that there was much division on this point. However, at the close of the war the United States took the position that the Indians had been traitors, and that in consequence of their bad faith the treaties which had been made with them were no longer effective. As a penalty for alliance with the South it was demanded of the Five Civilized Tribes that they give back to the Federal Government the western portion of their lands. The Indians, who held many negro slaves, were compelled to abolish slavery and to admit their slaves into tribal membership. Rights of way for the building of railroads were also demanded and the Indians were forced to make this concession.

This move on the part of the United States enabled it to rid itself to a great extent of the Indian problem in the other western states by bringing the savage plains Indians and mountain Indians to the western part of the territory. The building of the railroads tended to break up the tribal organizations of the Indians and also made possible the overnight development of the state when "openings" took place. Between the eastern holdings retained by their Indian owners and the western holdings surrendered by them and newly assigned to the plains Indians lay a block of land over which no one was given control—an unassigned district which later became the heart of Oklahoma.

Several attempts were made to organize the Indian country as a territory, but these were unsuccessful for many years. Instead of a territorial organization, a general council of the tribes in the Indian Territory was arranged, to control relations among the various tribes, and among Indians, freedmen and whites. "It was stipulated that the president of the general council should be an appointee of the government of the United States, and in the

treaty with the Chickasaws and Choctaws he was called the 'governor of the Territory of Oklahoma.' This was the first use of Oklahoma as a name for the Indian Territory. At the same time the consent of the Indians was secured for the establishment of a United States court, but it was expressly provided that the powers of the tribal courts should not be curtailed."²

Since the words "Territory" and "Oklahoma" (home for the red man) were thus linked together, the opposition to one was carried over to the other, and the name Oklahoma fell into disrepute with the Indians. Gradually this name came to be applied to the unassigned district which lay between the eastern and western Indian lands.

Many tribes of Indians were moved into the land which had been ceded to the United States by the Five Civilized Tribes, and many treaties and agreements were made, until by 1879 there were twenty-two separate Indian reservations in what is now Oklahoma³; but the central district was still unoccupied. For some time past white men had been desirous of settling in this land, but they had not succeeded in doing so, although many of them had settled among the Indians of eastern Oklahoma. In 1880 it was estimated that six thousand white persons were in the reservations of the Five Civilized Tribes, exclusive of railroad employees and certain laborers who had been authorized to remain by the tribal officials.⁴

The decade from 1879 to 1889 was a period during which continual attempts were made to occupy the unassigned lands in the central portion of what is now Oklahoma. For example, in 1880 David L. Payne organized a band of settlers and took up land almost in the heart of the

²Gittinger, Op. Cit. p. 84.

³Gittinger, Op. Cit. p. 94.

⁴Gittinger, Op. Cit. p. 176.

Oklahoma District, where he was arrested with eleven companions by United States officers. All were discharged as soon as they were removed across the Kansas line, but it was only two months until Payne was again arrested in his "home" with twenty companions. The United States District Court at Fort Smith, Arkansas, overruled Payne's contention that the Oklahoma District was part of the public domain, and held that the district was still a part of the Indian country. Payne was fined \$1,000, but as the only method of collecting it was by civil action and as he had no property that could be levied upon, this did not trouble him, and he once again returned to his self-appointed task of settling the Oklahoma District. He made further attempts to settle the country in the fall of 1880, in 1881 and in 1882. In 1883 a large expedition of some two hundred and fifty persons under his leadership settled in what is now known as Lincoln County, whence after a few days they were taken back over the Kansas line. Three or more other expeditions were attempted by Payne during this year, with persons whom he organized as Payne's Oklahoma Colony, but all were unsuccessful. In 1884, Payne made his last attempt to open the Oklahoma District with a considerable armed force. Upon his sudden death in November of that year, W. L. Couch was selected as leader of the settlers. Under his direction nearly four hundred intruders, including a few women and children, succeeded in crossing into the Oklahoma District and in establishing a settlement near the present site of Stillwater. Col. Hatch, who was sent with a detachment of soldiers with orders to eject this band, very wisely moved his soldiers to the north of the camp, thus cutting off supplies, and the "Boomers," as the invaders were generally called, were soon starved into submission.

All this agitation for the opening of Oklahoma could not fail to have its effect upon Congress, and in 1885 a bill

was passed which authorized the government to negotiate for the purchase from the Indian owners of any rights which they might claim in the Cherokee Outlet and the Oklahoma District.

By an Act of March 2, 1889, an appropriation was passed by Congress compensating the Indians for the rights which they claimed in these unassigned lands. The bill further authorized the President to open this land to settlement by proclamation. This marked the beginning of a succession of bills by which the Government finally obtained complete control of what is now the western half of the state, and also led up to the so-called "openings," which resulted in the rapid settlement of the western portion of the territory.

By various Acts of Congress, between the years 1889 and 1901, the western half of the Indian country was organized as the Territory of Oklahoma and one reservation after another was opened for settlement. Each of these settlements was made by a great rush of settlers, due, as Dr. Gittinger points out, to the fact that "The Indian Territory had become a wedge of the frontier embedded in the cultivated and inhabited area. The proximity of this unoccupied country to the railroads made it available for settlement, and the comparative scarcity of free land enhanced its value. The ten years of the boomer agitation had made known its existence and exaggerated its attractiveness."⁵

These facts had an important bearing later when the state was to frame its constitution and laws, since Oklahoma was settled by people from many states, each of which had made its own experiments in government.

The Territory of Oklahoma was established by Act of Congress on May 2, 1890. By the terms of this bill the new territory embraced all of the Indian Territory except

⁵Gittinger, *Op. Cit.* p. 152.

the districts occupied by the Five Civilized Tribes, seven very small reservations northeast of them, and the Cherokee Outlet. On May 15 of that year, George W. Steele of Indiana was appointed the first governor of the territory; and the first territorial legislature, convening at Guthrie, in August, enacted a code of laws.

By agreement with the Indian tribes, several other bodies of land, including the Cherokee Outlet, were opened for settlement, so that by 1893 Oklahoma Territory was a compact body of land.

In the meantime, there was a steady drift of whites into the Indian Territory, or the eastern half of the present state of Oklahoma. In his report for 1886, Robert L. Owen, who was in charge of the affairs of the Five Civilized Tribes, reported that there were thirty-two thousand whites here living in the Indian Territory, of which number there were five thousand intruders, and eight thousand miners and employees of the government and railroads. Two years later he reported that there were thirty-eight thousand five hundred outlanders living in the territory of the Five Civilized Tribes.⁶

This rapid influx of whites into the Indian Territory was due to the extensions of the railroads into this territory and also to the opening of the coal mines. Towns began to spring up rapidly but were without any civil government. Life and property became unsafe and the territory became the gathering place for "bad men." By a series of measures Congress attempted to remedy this situation. A United States court was established at Muskogee for the Indian Territory, which had jurisdiction in civil cases in which citizens of the United States were parties, to all amounts exceeding one hundred dollars. Since there was no law-

⁶Gittinger, Op. Cit. p. 177.

making body in the Indian Territory, Congress provided that certain Arkansas laws should be enforced. To this new court was given jurisdiction over offenses not punishable by death or imprisonment at hard labor; while in more serious offenses, the nearest district courts of the states bordering on the territory were given jurisdiction. Other steps were taken to give the territory a complete judicial system.⁷

In 1893, Congress established the Dawes Commission to prepare the Indian Territory for statehood by clearing up questions of tribal membership, making plans for the allotment of lands to individual Indians, making provision for the sale of surplus land and expediting the breaking up of tribal organization. By further acts, Congress authorized this commission to do as well as to recommend; and gave it power to allot the lands upon the completion of the rolls of tribal membership. Congress also provided for the incorporation of towns and established a system of schools for rural districts.

An Act of 1898 abolished the tribal courts and brought the Indians under the laws of the Federal Government. Upon the passage of an Act of March 3, 1901, declaring all of the Indians in the Indian Territory to be citizens of the United States, the Five Civilized Tribes ceased to exist except as financial corporations. To quote from Dr. Gittinger, "A million citizens of the United States were in need of state government in an area which twelve years before had been unorganized Indian Country."⁸

Six years from this time, after considerable discussion as to whether Oklahoma Territory and Indian Territory should be admitted separately or as one state, Congress passed an Enabling Act (approved by the President on

⁷Gittinger, *Op. Cit.* pp. 180-188.

⁸Gittinger, *Op. Cit.* p. 195.

June 16, 1906) providing for the admission of the two territories as one state.

The Enabling Act authorized a constitutional convention, composed of fifty-five members from each territory and two from the Osage Reservation. In the elections to the constitutional convention, the democrats were victorious; and, when the convention met, the farmer-labor group, headed by William Murray, obtained control. This constitutional convention had many difficult tasks before it. Two territories very different in population, industrial, economic and social conditions, had to be formed into one state. The unorganized condition of the Indian Territory made the creation of local government a difficult problem; moreover, the presence of many negroes in the new state meant that Oklahoma had to face not only the Indian problem but also the negro problem.

By the sixteenth of July, 1907, the convention had completed the draft of a constitution for the new state. This was submitted to the people on the seventeenth day of September and was ratified by them with a vote of one hundred and eighty thousand to seventy-three thousand. By the proclamation of President Roosevelt, on November 16, 1907, Oklahoma became a state.

THE CONSTITUTION OF OKLAHOMA

The Oklahoma Constitution has for its foundation the well known general principles of state and national constitutional government in the United States. The first of the principles may be said to be the agency theory of government or the theory that the people of the state are sovereign and that the governments which they set up are merely agents under their control and subject to all limitations which are placed upon them. The Massachusetts Declaration of Rights summarizes this philosophy: "All power re-

siding originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents and are, at all times, accountable to them.””

The Oklahoma Constitution says in its Bill of Rights: “All political power is inherent in the people; and government is instituted for their protection, security, and benefit, and to promote their general welfare; and they have the right to alter or reform the same whenever the public good may require it * * *¹⁰”

The second principle of state government which is adopted in the Oklahóma Constitution is that of the separation of powers, or the theory that the powers of government should be placed in three separate and distinct branches, the legislative, the executive and the judicial. The “legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers or either of them: to the end that it may be a government of laws and not of men.”¹¹ This idea finds its expression in the Oklahoma Constitution in the following words: “The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others.”¹²

⁹Art. V, Part the First, Constitution of 1780.

¹⁰Art. II, Sec. 1, Constitution of Oklahoma.

¹¹Constitution of Massachusetts, 1780, Art. XXX, Part the First.

¹²Art IV, Sec. 1, Constitution of Oklahoma.

The third doctrine common to both state and national governments is the doctrine of checks and balances. In common with most state constitutions, the Oklahoma Constitution contains, beside the great check and balance system inherent in the division of powers, many other specific checks and balances. The election of thirteen state executive officers acts as a check upon the powers of the governor, while the election of the members of the legislature and of all judges is intended to check their powers by means of popular control. Among the other important checks and balances found in the constitution are the veto power of the governor, the bicameral legislature, the provision that appointments made by the governor must be approved by the senate, and the reference to the people of all constitutional amendments and of certain legislation involving extraordinary expenditures. The constitution not only places many specific limitations upon the legislature, but also gives the people the important checks upon them of the initiative and the referendum. The division of powers gives the courts a most important check upon the legislature, in the power exercised by them of passing upon the constitutionality of legislation.

The fourth principle of government underlying this constitution is that of natural rights. This principle finds its expression in the declaration that "All persons have the inherent right to life, liberty, and the pursuit of happiness, and the enjoyment of the gains of their own industry."¹³ This provision of the bill of rights is augmented by some thirty-two additional sections protecting the individual in his life, liberty, and gains of industry. Beside the usual provisions found in a bill of rights the Oklahoma Constitution contains several newer provisions. Private property

¹³Art. II, Sec. 2, Const. Oklahoma.

is safe-guarded by the provision that it cannot be taken or damaged for private use, "with or without compensation, unless by consent of the owner, except for private ways of necessity, or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law"¹⁴; and also by the provision that "Private property shall not be taken or damaged for public use without just compensation."¹⁵ In addition to these constitutional prohibitions, the procedure for condemnation is outlined in detail. The constitution protects the owner by providing that the property shall not be disturbed or the proprietary rights of the owner divested until compensation shall have been paid. Another limitation upon the right of condemnation is found in the provision that "The fee of land taken by common carriers for right of way, without consent of the owner, shall remain in such owner, subject only to the use for which it is taken." The determination of the character of the use in case of condemnation is declared to be a judicial question. A rather unusual feature of the bill of rights is the power given to the state in respect to the carrying on of business, found in the provisions that "The right of the State to engage in any occupation or business for public purposes shall not be denied nor prohibited, except that the State shall not engage in agriculture for any other than educational and scientific purposes and for the support of its penal, charitable, and educational institutions."¹⁶ Municipal corporations are, furthermore, given the right to engage in any business or enterprise which may be carried on privately by virtue of a franchise granted by the municipality.¹⁷

¹⁴Art. II, Sec. 23, Const. Oklahoma.

¹⁵Art. II, Sec. 24, Const. Oklahoma.

¹⁶Art. II, Sec. 31, Okla. Const.

¹⁷This provision is not found in Bill of Rights but in Art XVIII, Sec. 6.

An exception to the ancient rule of law that no person shall be required to give evidence tending to incriminate himself is found in the provision that "Any person having knowledge or possession of facts that tend to establish the guilt of any other person or corporation charged with an offense against the laws of the State, shall not be excused from giving testimony or producing evidence when legally called upon to do so, on the ground that it may tend to incriminate him under the laws of the State: * * *"¹⁸ This substantial right is secured, however, by the further provision that he shall not be prosecuted or subject to any penalty or forfeiture on account of anything concerning which he may testify or produce evidence.

Complete immunity from martial law would seem to be guaranteed by the provision that "The privilege of the writ of habeas corpus shall never be suspended by the authorities of this State."¹⁹ This provision is strengthened by the section: "The military shall be held in strict subordination to the civil authorities."²⁰

Beside containing most, if not all, of the standard American philosophy regarding the state, the Oklahoma constitution contains a good many provisions which are not found in the older state constitutions. These provisions bear unmistakable evidence of what Professor Dealy calls, "The rising tide of direct democracy."²¹ In its direct provision for the initiative and referendum, in its direct election of nearly all of the chief administrative officers, in its provision for a direct primary system, in the extraordinary number of limitations upon the legislature and in the numerous statutory provisions incorporated within it, the con-

¹⁸Art. II, Sections 21 and 27.

¹⁹Art. II, Sec. 10, Okla. Const.

²⁰Art. II, Sec. 14.

²¹Political Science Review, Feb. 12, 1921. p. 57.

stitution of Oklahoma shows clearly that the people wished direct control over their government. The belief in "direct democracy" was not at all indigenous to Oklahoma but had been growing rapidly throughout the nation and particularly in the west and southwest.

No one of these so-called innovations was the work of the constitutional convention. Each of them was adopted from some other state. The framers of the Oklahoma constitution only placed in that instrument what was the dominant political philosophy of that day,²² at least, in the west and southwest.

The reason for the development of this philosophy of "direct democracy" is not hard to find. For nearly a hundred years there had been an ever growing distrust in representative government as exercised through state legislatures. Legislatures had been branded from one end of the land to the other as corrupt, inefficient and unworthy of public trust. Various methods of reforming them had been tried; subjecting them to many constitutional limitations, taking away their control to a very large extent over the executive and judicial branches, giving the governor greater powers, including the veto power, and taking away the power of legislatures over large and important fields of legislation. The courts, acting under various federal and state constitutional provisions in declaring legislative acts null and void, had placed stern limiting hands upon the legislatures. Yet with all these well meaning attempts to hold

²²The state of S. Dakota had adopted the initiative and referendum in 1899, Utah in 1900, Oregon in 1902, Nevada in 1904 and Montana in 1906. At least twenty-five states had adopted primary laws within the period from 1900 to 1907, while a good many others had adopted such laws even before this time. All of the constitutions written immediately preceding the Oklahoma constitution show a tendency to restrict the legislature and also to place many statutory provisions in the constitution.

the legislatures in the path of rectitude, they had continually gone from bad to worse.

It was but a logical step for the people to place more trust in themselves.²³ It is little wonder, then, that the men who framed the Oklahoma constitution, gathered as they were from many states, each of which had had bitter experience with its legislature, should have drawn up a constitution surcharged with disbelief in the legislature and filled with the spirit of direct popular control.

Especial fear and distrust of the legislature were perhaps further justified by the fact that special interests, railroads, etc., had very largely dominated the territorial legislature. Many provisions, statutory in their nature, were inserted in the constitution for fear that the legislature would either not frame laws at all on the matters covered by them, or would frame laws favorable to these special interests.

The reaction of the people of the United States and more particularly of the west and southwest toward the rapid concentration of business in the forms of trusts and monopolies also finds expression in the Oklahoma constitution. An intense feeling against monopoly which was expressing itself throughout the west and southwest in the form of bristling laws against the trusts, is reflected in this constitution. The most striking example of this feeling is found in Section 32 of the bill of rights, which declares: "Perpetuities and monopolies are contrary to the genius of a free government and shall never be allowed, nor shall the laws of primogeniture or entailments ever be in force in this State."

Other provisions arising from this same attitude are those

²³See article on State Political Reorganization, by Herbert Oroly, proceedings of American Political Science Association, 1912, at page 122, ff.

requiring railroads to transport one another's cars, freight and passengers²⁴; requiring oil pipe companies to receive and transport one another's oils or commodities²⁵; prohibiting the consolidation of stock, property or franchises, or the leasing or purchase by public utilities of one another's works or franchises²⁶; prohibiting free railway passes, except in certain cases²⁷; requiring a two cent passenger fare with certain exceptions²⁸; permitting the legislature to "alter, amend, annul, revoke, or repeal any charter of incorporation or franchise now existing and subject to be altered, amended, annulled, revoked, or repealed at the time of the adoption of this Constitution, or any that may be hereafter created, whenever in its opinion it may be injurious to the citizens of this State, in such manner, however, that no injustice shall be done to the incorporators²⁹;" prohibiting monopoly and discrimination³⁰; and prohibiting the granting of exclusive franchises or of municipal franchises for a longer period than twenty-five years³¹. Corporations are excluded from certain privileges and immunities guaranteed to natural persons. The constitution provides for searches into the actual operations of corporations by explicitly stating that their books, re-

²⁴Art. IX, Sec. 3, Okla. Const.

²⁵Art. IX, Sec. 4, Okla. Const.

²⁶Art. IX, Secs. 8 and 9. Okla. Const. Sec. 9 was amended in 1913, permitting railroads to consolidate.

²⁷Art. IX, Sec. 13, Okla. Const.

²⁸See Art. IX, Sec. 37, Okla. Const. It is interesting to note that in 1907 Illinois, Indiana, Minnesota, Nebraska, passed statutes fixing the passenger rate of railroads at two cents per mile. In an article in the Political Science Review for November, 1909, Mr. R. A. Campbell said: "The great tidal wave of railway passenger rate regulation began in Ohio in 1906, swept over the South and Middle West, reached its height in 1907, and since then has been slowly receding."

²⁹Art. IX, Sec. 47, Okla. Const.

³⁰Art. IX, Sec. 45, Okla. Const.

³¹Art. XVIII, Secs. 5 and 7, Okla. Const.

cords and files shall be at all times subject to the full visitatorial and inquisitorial powers of the state, notwithstanding the rights secured to persons and citizens³². Finally, a corporation commission is established with very large jurisdiction and the legislature is given power to enlarge this jurisdiction³³.

To a more limited extent the new social philosophy regarding labor and its rights, which was beginning to make itself felt in state legislatures during this period, finds expression in the constitution. The feeling of organized labor that the injunction with its punishment of contempt for disobedience was being used by judges without proper hearing and evidence, and that it was being used in the interest of capital against labor, undoubtedly gave rise to the provisions regarding contempt³⁴. "The legislature shall pass laws defining contempts and regulating the proceedings and punishment in matters of contempt; Provided, that any person accused of violating or disobeying, when not in the presence or hearing of the court, or judge sitting as such, any order of injunction, or restraint, made or entered by any court or judge of the State shall, before penalty or punishment is imposed, be entitled to a trial by jury as to the guilt or innocence of the accused.

³²Art. II, Sec. 28, Okla. Const.

³³Art. IX. See Chapter on Corporation Commission.q. seq. The Wisconsin Commission of 1905 was the first to be given such mandatory powers in respect to equipment and rate-making as to substitute administrative control for legislative control. New York and Oklahoma established commissions with similar powers in 1907. See Bass, J., Legal Aspects of Public Utility Regulation, Oklahoma Municipalities, Feb. 1, 1922, pages 3-17.

³⁴It is significant of the feeling that existed at this time against the use of the injunction and of the punishment of contempt of court for disobeying it that the question was taken up in the platforms of both political parties in 1908. See Beard, American Government and Politics, 1912 ed. p. 305.

In no case shall a penalty or punishment be imposed for contempt, until an opportunity to be heard is given³⁵."

Other provisions were likewise made in favor of labor. A department of labor was created under the control of the commissioner of labor, and the legislature was required by the constitution to create within the department of labor a board of arbitration and conciliation³⁶. Eight hours were to constitute a day's work in employment by or on behalf of the state or its subdivisions³⁷; the contracting of convict labor was prohibited³⁸; child labor in occupations "injurious to health or morals or especially hazardous" was prohibited³⁹; the work of children and women in mines was prohibited and eight hours were to constitute a day's work under ground⁴⁰. The legislature was required to pass laws to protect the health and safety of employees in factories and mines and on railroads⁴¹. The common law doctrine of fellow servant was abrogated insofar as it applied to certain employees of railroads, street and interurban railways and mines; and the legislature was empowered to extend this provision to other classes of employees⁴².

The unsatisfactory relationship obtaining between the cities of the various states and the states themselves is reflected in a constitutional provision purporting to give home rule to cities⁴³. As is the case with nearly all of the newer provisions of the constitution, this idea was

³⁵Art. II, Sec. 25, Okla. Const.

³⁶Art. VI, Sec. 20-21, Okla. Const.

³⁷Art. XXIII, Sec. 1, Okla. Const.

³⁸Art. XXIII, Sec. 2, Okla. Const.

³⁹Art. XXIII, Sec. 3, Okla. Const.

⁴⁰Art. XXIII, Sec. 4, Okla. Const.

⁴¹Art. XXIII, Sec. 5, Okla. Const.

⁴²Art. IX, Sec. 36.

⁴³Art. XVIII, Secs. 3a-3b.

borrowed from other states, six states having adopted one form or another of home rule before it was inserted in the Oklahoma constitution⁴⁴.

Probably the special article in the constitution providing for statewide prohibition, which was voted upon separately by the people, was not due entirely to the very strong sentiment for prohibition which was sweeping the country at the time, though it was doubtless influenced thereby. An important factor in this case was the requirement of the Enabling Act⁴⁵ that liquor should be prohibited in the Indian Territory or eastern part of the state for twenty-one years and thereafter until the people should provide otherwise by a constitutional amendment.

The Oklahoma constitution shows little variation from other state constitutions in respect to the organization of the state government, except in two points; namely, the great amount of space given to the organization of county government and the description of counties⁴⁶ and the unusual detail with which the departments of state government are treated. The constitution not only names the officers who shall head the various departments, prescribes their qualifications and provides for the method by which they shall be elected, but outlines their duties very fully and

⁴⁴McBain, H. L., *Municipal Home Rule*, pages 114-115.

States which had adopted this policy prior to Oklahoma were Missouri, in 1875, California, in 1879, Washington, in 1889, Minnesota, in 1896, Colorado, in 1902, Oregon, in 1906.

⁴⁵Enabling Act, Sec. 3, Second.

⁴⁶About twenty-five pages, nearly one-fourth of the entire constitution, are devoted to the description of counties. Some counties were left as they were, new counties were created from old counties, and all of the Indian Territory was divided into counties by the Constitutional Convention; all counties, however, were fully described in the Constitution. It would have made this document more compact and more logical if the description of counties had been appended as a schedule.

even organizes bureaus and boards within the departments.*

Several boards and commissions, such as are established by law in other states, are in Oklahoma set up by the constitution ⁴⁸ or else the constitution requires the legislature to establish them⁴⁹. The corporation commission furnishes the best example of a board established by the constitution⁵⁰. Not only is it organized by the constitution, but some ten pages, or about a tenth of the entire instrument, are devoted to outlining its powers, jurisdiction and duties, its procedure, the methods of taking appeal from its decisions, etc. Such regulation of minor details is unusual, except among the latest constitutions; and it furnishes a striking example of unwillingness to entrust the legislature with matters which were formerly thought to fall wholly within its province.

According to the common practice, the Oklahoma constitution organizes the local governments. As we have already noted, the constitution created the counties of the state and defined their boundaries⁵¹. It also provides for the different kinds of county officers, but permits the legislature to make such changes as it deems wise⁵². The procedure for creating and altering counties⁵³ and for the re-

⁴⁷See Art. VI. Okla. Const.

⁴⁸Among the boards and commissions so established are the Board of Agriculture, the Commissioners of the Land Office, the State Board of Equalization, the Department of Highways, the Department of Labor, a Board of Arbitration and Conciliation and the State Board of Education.

⁴⁹Art. V., Sec. 38, lays upon the legislature the duty of providing for the establishment of a State Geological and Economic Survey. Sec. 39 of the same article provides that the Legislature shall create a Board of Health, Board of Dentistry, Board of Pharmacy and Pure Food Commission.

⁵⁰Art. IX, Oklahoma Constitution.

⁵¹Art. XVII, Sec. 8, Okla. Const

⁵²Art. XVII, Sec. 2, Okla. Const.

⁵³Ibid, Secs. 4 and 5.

moval of county seats⁵⁴ is laid down in detail in the constitution.

Municipal corporations may not be created by special laws, but the legislature is given power to provide by general laws for the incorporation of cities and towns⁵⁵. Detailed provisions are given in the constitution whereby a city of over two thousand population can frame its own charter, with the provision that it be "consistent with and subject to the Constitution and laws of this State⁵⁶."

The constitution provides for the primary system in municipalities⁵⁷ and also for the initiative and referendum in regard to ordinances and to amendments to home rule charters⁵⁸. The constitution likewise lays down in detail the procedure which shall be followed in the use of this "weapon of modern democracy."

The constitution establishes the procedure to be followed by municipal corporations in the granting of franchises⁵⁹. Such corporations are permitted to engage in any business or enterprise which may be "engaged in by a person, firm, or corporation by virtue of a franchise from said corporation⁶⁰."

"No grant, extension, or renewal of any franchise or other use of the streets, alleys or other public grounds or ways of any municipality, shall divest the State, or any of its subordinate subdivisions of their control and regulation of such use and enjoyment.

"Nor shall the power to regulate the charges for public

⁵⁴Ibid, Sec. 6.

⁵⁵Art. XVIII, Sec. 1, Okla. Const.

⁵⁶Ibid, Sec. 3a and 3b, Okla. Const.

⁵⁷Art. III, Sec. 5.

⁵⁸Art. XVIII, Sec. 4a to 4e.

⁵⁹Ibid, Sec. 5a and 5b.

⁶⁰Ibid, Sec. 6.

services be surrendered; and no exclusive franchise shall ever be granted⁶¹."

No franchise can be granted for a longer time than twenty-five years⁶².

A good many limitations are placed upon the legislature in respect to the financial operations of municipal subdivisions of the state, such as forbidding the state to loan or pledge its credit to any municipality or political subdivision of the state⁶³ prohibiting the legislature from authorizing any municipal subdivision of the state to become a stockholder in or to lend money to any corporation, association or individual⁶³, prohibiting the legislature from imposing taxes for any municipal subdivision of the state, but permitting it by general law to confer on the proper authorities of municipal subdivisions the power to assess and collect taxes⁶⁴.

Many other financial limitations are placed upon municipal subdivisions and their officers, such as the amount of ad valorem taxes that may be levied⁶⁵, the requiring of a statement in any law or ordinance authorizing the borrowing of money or the levying of taxes of the purpose for which the money was borrowed or the taxes levied, and forbidding such money or taxes to be used for any other purpose⁶⁶, making the receiving by any officer of a municipal subdivision of interest, profit or perquisites arising from the use or loan of public money, a felony⁶⁷, requiring municipal subdivisions to levy an annual tax to provide for the payment of interest, sinking funds and

⁶¹Art. XVIII, Sec. 7.

⁶²Art. X, Sec. 15.

⁶³Art. X, Sec. 17.

⁶⁴Art. X, Sec. 20, Okla. Const.

⁶⁵Art. X, Secs. 9 and 10.

⁶⁶Ibid, Secs. 16 and 19, Okla. Const.

⁶⁷Art. X, Sec. 11, Okla. Const.

judgments⁶⁸ and limiting the indebtedness of such subdivision⁶⁹.

Amendments to the constitution may be brought before the people for ratification or rejection in two ways, either by legislative action, or by popular initiative. An amendment to the constitution may be proposed in either branch of the legislature, and if agreed to by a majority of the members elected to each of the two houses, the amendment, with the yeas and nays thereon, is entered in the journals of each house. It is then referred by the secretary of state to the people for their approval or rejection at the next regular general election, except when the legislature shall by a two-thirds vote of each house order a special election for that purpose. If a majority of all the electors voting at such an election vote in favor of the amendment, it becomes part of the constitution⁷⁰. It will be seen that if any person voting at an election fails to vote upon any amendment, this failure to vote counts as a vote against the proposition. If two or more amendments are proposed they must be submitted in such a manner that the electors may vote upon them separately.

No convention may be called by the legislature to propose alterations, revisions or amendments to the constitution, or to propose a new constitution, unless the law providing for such convention shall be approved by the people on a referendum vote at a regular or special election. Any amendments, alterations, revisions or new constitution, proposed by a convention, must be submitted to the electors of the state at a general or special election and must be approved by a majority of the electors voting thereon before it becomes effective. The question of a

⁶⁸Ibid, Secs. 26 and 28.

⁶⁹Ibid. Sec. 26

⁷⁰Art. XXIV, Sec. 1, Okla. Const.

proposed convention must be submitted to the people at least once in every twenty years⁷¹.

The above article does not impair the right of the people to amend the constitution by a vote upon an initiative petition. Fifteen per cent of the legal voters have the right to propose amendments to the constitution by petition. The petition must include the full text of the measure proposed. Petitions and orders for the initiative are filed with the secretary of state and addressed to the governor, who submits them to the people. All elections on initiated measures must be held at the next general election except when the governor orders a special election⁷²; and a majority of all votes cast at the election must favor a proposed amendment in order that it may be carried.

An interesting question that has arisen⁷³ regarding initiated amendments, as well as others, is whether or not they are self-executing. In other words, does the legislature have to vitalize constitutional provisions by laying down rules by means of which the general constitutional provisions shall be given the force of law? It has been held in Oklahoma that certain amendments, even if made by the people, are not self-executing and remain dead until further supplemented by legislative action which gives the amendments the force of law. Judge Williams, in the case of *Reardon v. Scales*⁷⁴, following *Coley*⁷⁵, gave two criteria for the determination of this question: "A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be

⁷¹Art. XXIV. Sec. 2. Okla. Const.

⁷²Art. V. Secs. 2 and 3. Okla. Const.

⁷³*Linthicum v. School District, etc.*, 49 Okla. 48, 149 Pac. 898.

⁷⁴21 Okla. 683, 97 Pac. 584.

⁷⁵*Constitutional Limitations.*, 7th ed., p. 121.

enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law." Judge Kane, in the case of *Linthicum v. School District*, would seem to add the criterion of whether or not other existing constitutional or statutory provisions are sufficient to put the law in force. It is entirely possible then, for the legislature to defeat the express will of the people by refusing to "vitalize" an amendment passed by them, unless within itself it contains sufficient means for its enforcement, or unless other constitutional or statutory provisions make it effective.

An example of the manner in which the will of the people of Oklahoma, as expressed by a constitutional amendment, may be defeated because an amendment is not self-executing is found in the history of the amendment commonly known as Section 12a. In 1913 the people added to Article X of the constitution, Section 12a, which provided that "all taxes collected for the maintenance of the common schools of this State, and which are levied upon the property of any railroad company, pipe line company, telegraph company, or upon the property of any public service corporation which operates in more than one county in this State, shall be paid into the Common School Fund and distributed as are other common school funds of the State."

The legislature consistently refused to vitalize this amendment. An initiated measure vitalizing this section of the constitution was rejected by the people themselves in 1921.

SUMMARY

We have shown that much of the Oklahoma constitution is but the reflection of prevalent American doctrines of government; that many of its newer provisions are but the

constitutional embodiment of the newer economic, social and political doctrines which were sweeping the country at the time of its establishment; and that it shows a great distrust of the legislature and a strong belief in the power of "direct democracy."

In the following chapters most of the significant provisions of the Oklahoma constitution will be discussed in detail. In summarizing the constitution here, therefore, only certain noteworthy features will be taken into consideration.

Little need be said here as to the general American political philosophy regarding the state, of which some outstanding doctrines were stated earlier in this chapter. For many years certain of these doctrines have been subjected to severe criticism from both theoretical and practical standpoints. The doctrine of separation of powers and the doctrine of checks and balances have been attacked repeatedly on the ground that they have not only failed to bring about any particular benefit, but that they have actually impeded the work of government.

It has been pointed out that the complete separation of executive and legislative powers gives rise to the anomalous situation that, although the governor is elected because of his advocacy of certain policies, he has no assurance that these policies will be upheld by the legislature and formulated into law. This makes for lack of responsibility on the part of the governor and puts the people in the position of having selected for their leader one who cannot lead except by the bribe of patronage, the compulsion of the "big stick," or a very unusual personality.

Nothing, perhaps, has so emphasized the need of an organic relationship between the governor and the legislature in our states, as the recent experiments in the making of state budgets. The unsatisfactory results of the so-called "executive budget" in the various states which have intro-

duced it, have made it necessary for those who desire to see the public business conducted more efficiently to give serious consideration to the problem whether there can be an effective budget system without a closer relationship between the executive and legislative branches⁷⁶. The experience of Oklahoma with the "executive budget" will be discussed in more detail in a later chapter.

An important check upon the power of the governor of Oklahoma over the state administration is found in the fact that he is but one of thirteen popularly elected "executive" officers. There is no doubt that the appointment by the governor of all executive officers would be a great improvement over the present system, as it would bring about a centralization of responsibility and a uniformity of policy which would make for a much higher degree of efficiency than now obtains. Many thinkers question the value of the bicameral legislature, and the constitutional provision that appointments made by the governor shall be approved by the senate.

It is extremely doubtful whether the faith in "direct democracy" expressed by the constitutional convention in the provisions providing for popular participation in the making and amending of the constitution, in the initiative and referendum, in the primary system and in the election of practically all officers, has been justified by the almost score of years of actual experience under the constitution.

As will be seen in the chapter on the initiative and referendum, the people, by and large, have taken little interest in the majority of constitutional questions presented to them. It is perfectly evident that the people cannot vote intelligently upon questions involving complex legal, economic or administrative subjects, which would demand

⁷⁶See National Municipal Review, Vol. IX, pp. 279-288.

prolonged study from experts before a sound conclusion could be reached. Out of forty-one constitutional measures voted upon by the people, only nine have become law. What is the nature of the nine? With two exceptions these were measures regarding which the people had either a direct knowledge, a personal prejudice or some sort of bias. All the farmers in the state and most other people knew about a board of agriculture, which with its amendments was voted on twice. Woman's suffrage, the location of the state capital, the grandfather clause, drunkenness as a cause for impeachment, are all propositions on which every one has an opinion one way or another. None of them require study and research. The other two amendments which the people enacted into law have a most interesting history. The amendment to section nine, article nine, was before the people four times before it was passed. This amendment which was consistently backed by a few interested parties, both by initiated petitions and also before the legislature, had for its purpose the granting to railway companies of the right to combine. It was finally passed at a special election at which very few votes were cast.

A tax distribution bill has also been before the people in one form or another four times. This amendment, known as "Section 12a", provides that all taxes levied for the maintenance of common schools of the state upon the property of certain public utilities operating in more than one county shall be paid into the common school fund of the state and distributed as a part of that fund. At a general election in 1910 the people voted 101,636 to 43,133 for the measure but as it took 123,834 votes to make a majority of all the votes cast at the election, the measure was lost. At a

⁷⁷Const., Art. X, Sec. 12a.

special election in 1913 the people voted for the measure by a vote of 63,330 to 30,295, and so it was adopted. The legislature refused to vitalize it or put it into force; although, according to a supreme court decision, vitalization is necessary⁷⁸. In 1915 a bill was proposed by the legislature repealing the amendment. At the primary election in 1916 the people refused by a vote of 127,525 to 76,093, to sanction this repeal. In 1920 the people refused to pass an amendment vitalizing this section by a vote of 162,749, to 179,271. The question may fairly be asked, do the people in their collectivity know what they want?

It is interesting and instructive to inquire into the kinds of measures for which the people have voted unfavorably, or which have failed to become law by virtue of the fact that they did not secure a majority of all votes cast⁷⁹. Examination shows that a majority of these measures are of such a nature as to require study, thought, and a general knowledge of government and economics. Evidently where the people do not know they vote "no" or else do not vote at all. There is also evinced by the vote cast on constitutional amendments, as compared to the vote cast for officers, a very great lack of interest on the part of the people in constitutional measures. This lack of interest and knowledge is forcibly expressed by Mr. Justice Moore⁸⁰, when he says, "The majority of qualified electors are so much interested in managing their own affairs that they have no time carefully to consider measures affecting the general public. A great number of voters undoubtedly have a superficial knowledge of proposed laws to be voted upon, which is derived from newspaper comment or from conversation with their associates. We think the assertion may

⁷⁸*Linthicum v. School District, etc.*, 49 Okla. 48; 149 Pac. 898.

⁷⁹See Chapter VIII, page —.

⁸⁰*State ex rel. v. Richardson*, 48 Oregon 319.

safely be ventured that it is only the few persons who earnestly favor or zealously oppose the passage of a proposed law initiated by petition who have attentively studied its contents and know how it will probably affect their private interests. The greater number of voters do not possess this information and usually derive their knowledge of the contents of a proposed law from an inspection of the title thereof, which is sometimes secured only from the very meager details afforded by a ballot which is examined in an election booth preparatory to exercising the right of suffrage."

If one compares carefully the measures which have failed to become law with those that have become law, several striking facts are disclosed. Not a single amendment put into operation by the people⁸¹, except the woman's suffrage amendment, is in any degree progressive. Moreover, as a rule it is the legislature and not the people who have initiated progressive measures. But almost without exception these progressive measures have been defeated by the people. Amendments which sought to establish the Torrens land title system, to provide aid for schools, to establish a state tax commission, to establish a literacy test for voting, to provide compulsory compensation in case of industrial accidents, to consolidate the appellate courts, to reduce the number of jurymen, to provide for good roads, and to increase the pay of legislators, were all measures progressive in their nature; and all were proposed by the legislature and defeated by the people.

With the exception mentioned above, the amendments put into the constitution by the people have been non-fundamental in nature—measures which would be statutory law if the already existing constitutional provisions

⁸¹It will be remembered that Section 12a was passed but not vitalized, so that it remains inoperative.

did not make it necessary to include them in the constitution. No change in the form of government or even in the state administration has been made by the people, despite the fact that the government of Oklahoma as a machine has never run smoothly. Such facts carry very serious implications. If the people set up a machine for the carrying on of their government and yet it cannot be changed, no matter how badly it is working, without the vote of a people who will either vote unfavorably or else vote not at all on measures which present the slightest complications, what is to become of good and efficient administration?

The action of the people in lawmaking as distinguished from constitution making, if such a distinction can be made under a constitution which is itself filled with provisions statutory in nature, has been even less significant than their action on constitutional measures. Only one of the four bills initiated by the people (that providing for the popular nomination of United States senators) ever became a law. This was made inoperative by virtue of the seventeenth amendment to the federal constitution, which provided for the direct election of United States senators. None of the initiated measures had any great significance. Is the reason that the people do not initiate measures due to the fact that the legislature itself passes all the large and significant laws necessary for the state? This can hardly be the case, as it is safe to assert that there are very important measures which the people interested in good government have been trying to put through the legislature for years but have not succeeded in placing on the statute books. Why do not the people then try to enact such laws themselves? The answer can only be given that the people are interested in other things; they have no method of finding out the necessity of certain laws; the laws affect perhaps only a few people of the state, although they affect these vitally, and without

the stimulus of self-interest the general public can seldom be moved to action.

The effect of the referendum vote on the acts of the legislature has been almost negligible. There has been a referendum demanded by the people upon only five of the some thousands of acts passed by the legislature during the past fifteen years, and none of them has been significant. Only two of these acts, the mining bill and a bill regulating the practice of medicine, have been made inoperative by virtue of the efforts of the people. A serious defect in the Oklahoma constitution is the great amount of statutory material contained therein. This makes the constitution so long and complicated that it cannot well be comprehended by the average person. The possibility that laws may be unconstitutional is greatly increased when the constitution deals in minute detail with a great many subjects. This means that serious restrictions are placed upon the power of the legislature to act for the welfare of the public. Any large or important measure may readily fall within a limitation, either express or implied, found in the constitution. Economic, political or social conditions cannot be dealt with effectively.

The many limitations placed upon the legislature are a grave fault of the constitution. These limitations reduce the scope of legislative authority and so reduce the power of the legislature to deal effectively with new economic or social situations as they arise. Because of these limitations the legislature cannot act on many matters which should fall within its province, otherwise than by proposing constitutional amendments. This leaves the problems confronting the state squarely up to the people if anything at all is to be done. Such a situation would demand from the people much initiative, a keen consciousness of the difficulties to be met, time for investigation and an ability to study public questions most profoundly, as well as available ref-

erence works, and either an education or practical experience in economics, law, government and administration. Without some such fundamental basis no one can pass intelligently upon many of the large public questions with which the state is confronted. It should be perfectly evident that such a basis belongs to relatively few in any state. Let us not deceive ourselves. The people no more solve their political questions correctly by voting upon them than they would solve a question in mathematics, chemistry or engineering correctly by a mere majority vote.

Constitutional limitations also break down the sanction which laws should have, since no one knows whether a law is or is not a law until the courts have decided whether it is or is not in conflict with these limitations. This not only hinders the efficient enforcement of law, but also weakens the respect of the people for law. As is pointed out in a later chapter, reducing the power of the legislature makes seats in that body unattractive to men of ability, and thus tends to lessen the caliber of men in the legislature.

In framing a new constitution, we should return to the earlier state constitutions in the United States as examples of brevity and simplicity. Only the main outlines of the government should be contained in such a fundamental instrument, leaving all other organization, as well as the duties and responsibilities of officers generally, in the hands of the legislature. Few limitations should be placed upon the legislative authority and these should be fundamental in nature. It is only by such methods that we can escape the excess of constitutionalism which hinders and binds us far more than it protects us and insures us liberty.

It is extremely doubtful if a new constitution should provide for as wide popular participation in government as is provided for by the present constitution. With the popular

constitutional and legislative record in mind, it is hard to see any justification for direct government. Instead of entrusting our welfare to those who do not know, those who have no basis for passing intelligently upon public questions and those who are not interested or who if interested are concerned only with their own selfish ends, it is much better to make every effort to create a legislative body both responsible and accountable.

CHAPTER II.

THE STATE LEGISLATURE

The legislature of Oklahoma is a bicameral body, the two houses being termed, in accordance with American practice, the senate and the house of representatives. The legislative authority of the state is vested in these two houses, subject to the reserved rights of the initiative and referendum, which are, in brief, rights retained by the people, on petition of a certain percentage of the electorate, to vote upon the enactment of a proposed law.¹

The senate consists of "not more than forty-four members" except that if any county by virtue of its population becomes entitled to more than two senators, these additional senators are to be in excess of the forty-four provided for by the constitution. The term of the senators is four years, one-half of them retiring every two years.² The house of representatives, "until otherwise provided by law," was limited by the constitution to one hundred and nine members. The constitutional provisions for the apportionment of members among the counties make their number variable from session to session, with one hundred as the basic figure. The term of representatives is two years, and an entirely new house is elected each biennium³.

The only difference in the qualifications required of senators and representatives is that the former must be at least twenty-five years of age when elected, while the age requirement for representatives is twenty-one years. Members of the legislature must be qualified electors in their

¹Const. Art. V, Sec. 1.

²Const. Art. V, Secs. 9, 9a.

³Const. Art. V, Sec. 10.

respective counties or districts and must continue to reside in the same during their term of office. Conviction of felony or expulsion from the legislature for corruption constitutes a bar to membership in either house. A member of the legislature may not during his term of office serve as an officer of the United States or of the state government.⁴ The enforcement of these provisions is vested in the two houses, each of them being "judge of the elections, returns, and qualifications of its own members."⁵

The apportionment of representation in both houses among the counties of the state is done by the legislature every ten years, subject to the restrictions of the constitution. Apportionment acts are subject to veto by the governor just as are other bills, and may be reviewed by the supreme court of the state at the suit of any citizen, under such rules and regulations as may be prescribed by the legislature. The constitution provides that at each senatorial apportionment after 1910 the state shall be divided into forty-four senatorial districts, each electing a single member. Districts must be as nearly equal in population and as compact as possible, and must consist of contiguous territory. Representatives are apportioned among the counties of the state in accordance with a rather complicated system of "ratios." The population of the state is divided by one hundred and the quotient so obtained constitutes the "ratio of representation" for the apportionment period. Each county whose population is equal to one-half of this ratio is entitled to one representative. Each county whose population amounts to one ratio and three-fourths over is entitled to two representatives. More populous counties are given one additional member for

⁴Const. Art. V. Secs. 17-18-19.

⁵Const. Art. V, Sec. 30.

each ratio above the amount required for two, subject to the limitation that no county shall take part in the election of more than seven members of the lower house. If the population of any county, after deducting from it the amount necessary to entitle it to one or more representatives for the entire apportionment period, is such that multiplied by five it amounts to one legislative ratio, that county is entitled to one additional member in one legislative session of the decennial apportionment period. If the result of this mathematical gymnastic exercise is equivalent to two ratios, the county receives one additional representative in two sessions, and so on in like manner. A county whose population is insufficient to entitle it to one member is attached to an adjoining county to form one representative district. No county may be divided in the formation of either senatorial or representative districts, except to form two or more districts wholly within the county. Where counties are so divided, the districts must be as nearly equal in population as possible.⁶

The constitution provides that legislative apportionments shall be made at the first session of the legislature after each decennial Federal census, and that the districts thereby created are to remain unchanged for ten years. Pursuant to this requirement, a reapportionment of representatives was made by the legislature in 1911,⁷ but no reapportionment of senators has yet been made. Senators are elected at the present time from the thirty-three districts originally created by the constitution, eleven of which select two senators⁸.

Just why no reapportionment of senatorial districts was

⁶Const. Art. V, Secs. 9-10.

⁷S. L. 1911, Ch. 123.

⁸A thirty-fourth district was created in 1919, S. L. 1919, Ch. 121.

made in 1911 is not apparent, unless the legislators were of the opinion that, because of its position in the constitution⁹, the provision for a decennial reapportionment applied to the house of representatives alone. The language of the provision, however, clearly indicates the contrary. The legislature has also seen fit to ignore the constitutional requirement that legislative districts shall remain unchanged during the decennial period for which they were made, and has frequently changed their boundaries.

Regular sessions of the legislature are held biennially in the odd-numbered years. The session commences at noon on the first Tuesday after the first Monday in January, unless otherwise provided by law. Special sessions may be called by the governor at any time, and in these sessions the legislature is limited to the consideration of such subjects as may be submitted to it by the governor. The governor may also call a special session of the senate alone¹⁰. No limit is placed by the constitution on the duration of legislative sessions. However, as the compensation of members is fixed at six dollars per day for the first sixty days of the session and is reduced to two dollars per day thereafter, the legislators finish the business of the session as soon after the expiration of the sixty days as is possible. By legislative interpretation only actual working days are included in the computation of the term for which the larger compensation is drawn, thus excluding holidays and Sundays, although such days are counted in computing the amount to be drawn by the legislators. A constitutional amendment extending the period during which full pay should be drawn to ninety days, with the proviso, that new bills might be introduced

⁹See Const., Art. V, Sec. 10b.

¹⁰Const. Art. V, Secs. 26, 27, Art. VI, Sec. 7.

after sixty days of the session had elapsed only with the consent of the governor, was rejected by the people in 1920. Legislators also receive the sum of ten cents for each mile of "necessary travel" in going to and returning from the meeting place of the legislature by the most usual route¹¹.

Members of the legislature, while in attendance at its sessions, or while going to or returning from the same, are privileged from arrest, except for treason, felony, or breach of the peace. They may not be questioned in any other place for any debate or speech in either house. Legislators may not receive appointments from the governor, the governor and the senate, or the legislature during the term for which they were elected, nor may they during such term be elected or appointed to any state office which has been created or the compensation for which has been increased during that term. They may not be interested during their term of office nor for two years thereafter in any contract with the state or any of its subdivisions which has been authorized by a law passed during such term.¹²

The authority of the legislature extends to all rightful subjects of legislation.¹³ The constitution specifically enumerates a large number of subjects as being within the domain of legislative action, but this does not act as a limit upon the power of the legislature over matters not included in the enumeration. However, the legislature must exercise its power subject to the restrictions placed upon all the states by the federal constitution and to those restrictions which have been imposed by the people in the state constitution.

The constitutional restrictions upon legislation in Okla-

¹¹Const. Art. V, Sec. 21.

¹²Const. Art. V, Secs. 22, 23.

¹³Const. Art. V, Sec. 36.

homa may be classified as follows: first, restrictions designed to protect the rights and liberty of the individual, found in the "Bill of Rights"¹⁴; second, restrictions specifically forbidding the legislature to enact laws upon certain subjects or to pass certain types of legislation with regard to permitted subjects; third, restrictions upon the procedure by which legislation may be enacted; fourth, restrictions brought about by the inclusion in the constitution of many provisions partaking of the nature of ordinary law.

Restrictions of the first type are to be found in Article II of the constitution. They include guarantees of the rights of life, liberty, and the pursuit of happiness, the possession of property, and the free exercise of political rights. Free access to the courts of justice is declared to be the right of everyone, and especial safeguards are placed about the accused in criminal trials. Many of these provisions are very general in their terms, and the question as to whether any legislative act is in violation of them is a matter for judicial determination.

The second class of restrictions is distinguished from the first in that they consist of specific prohibitions of the exercise of legislative power in regard to certain subjects, and are imposed, not as a protection of the rights and liberties of the individual citizen, but because in the opinion of the framers of the constitution the best interests of the state as a whole required that these subjects be removed from the domain of legislative action. Under these provisions the legislature is forbidden to grant by law exclusive rights, privileges or immunities to any person, corporation, or association¹⁵; and to revive a right of action

¹⁴Const. Art. II.

¹⁵Const. Art. V, Sec. 51.

or remedy which has been barred by the lapse of time or by law, or after suit has been begun on any existing cause of action to take away the cause of action or to destroy an existing defense to such a suit.¹⁶ The legislature may not release or extinguish the indebtedness or liability of any individual or corporation to the state or any of its subdivisions, nor may it by law authorize such a release.¹⁷ Legislative action retiring any officer on pay or part pay or making a grant to a retiring officer, or appropriating public money for a bureau of immigration is prohibited by the constitution.¹⁸ The number and emolument of legislative employees may not be increased except by general law, and such law may not take effect during the term at which it was enacted.¹⁹ Property may not be exempted from taxation by the legislature except as provided by the constitution.²⁰ Many other restrictions of this type may be found within the fundamental law of the state.

In order to guard against improper practices in the passage of laws a number of provisions have been inserted in the constitution, prescribing the procedure that shall be followed by the legislature. A quorum in each house consists of a majority of the members, although a smaller number may adjourn from day to day and may, by rules of each house, be authorized to compel attendance of absentees.²¹ Every bill must be read on three different days in each house. On final passage a bill must be read at length and in order to pass must be voted for by a majority of all the members elected to each house. The yeas and nays upon

¹⁶Const. Art. V, Sec. 52.

¹⁷Const. Art. V, Sec. 53.

¹⁸Const. Art. V, Secs. 47 and 48.

¹⁹Const. Art. V, Sec. 49.

²⁰Const. Art. V, Sec. 50.

²¹Const. Art. V, Sec. 30.

the passage of any bill must be entered upon the journals of the houses²². After a bill or joint resolution has been passed by either house it must be read at length publicly. Immediately thereafter the presiding officer must sign the bill in the presence of the house, and the fact of such reading and signing must be entered upon the journal. The reading at length may be dispensed with by the vote of two-thirds of the members present, the vote being taken by yeas and nays and recorded in the journal.²³ Bills for raising revenue must originate in the house of representatives but may be amended in the senate. No revenue bill may be passed during the last five days of the session.²⁴ A legislator who has a personal interest in any bill must disclose that fact to the house of which he is a member, and refrain from voting upon the measure.²⁵ Every legislative act, other than general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of the statutes, must embrace only one subject, clearly expressed in the title. No law may be revived or amended, nor may the provisions of any law be extended, by reference to the title only. The portion affected must be reenacted and published at length.²⁶ Section 46 of Article V of the constitution contains an enumeration of some twenty-eight subjects regarding which it declares that the legislature shall not, "except as otherwise provided in this Constitution," pass any local or special law. Section 32 of the same article provides that no special or local law may be considered by the legislature until a notice of intended introduction of the bill, stating in substance its provisions,

²²Const. Art. V. Sec. 34.

²³Const. Art. V. Sec. 35.

²⁴Const. Art. V, Sec. 33.

²⁵Const. Art. V, Sec. 24.

²⁶Const. Art. V, Sec. 57.

has been published for four consecutive weeks in a weekly newspaper of general circulation in the city or county affected by the law and verified proof of the publication filed with the secretary of state. Section 59 of this article provides that no special law shall be enacted where a general law can be made applicable.²⁷ The inhibitions of Section 46 and the limitation of Section 32 have been avoided so far as the regulation of city and county affairs is concerned by the use of the "principle of classification." The courts have held that the legislature may enact laws applicable to persons or localities of a certain class, that such laws if applied throughout the state to all persons or localities of the class specified are general and not special, and that population furnishes a reasonable basis of classification as between localities²⁸. As a result, the session laws of every legislature contain numerous measures, applying in terms to all cities or counties of a given population, which in fact apply to but one.²⁹

Additional restrictions upon the power of the legislature arise out of the fact that the framers of the constitution saw fit to include in that instrument many provisions of the type usually embodied in legislative enactments. Among the most striking examples of such provisions are the articles of the constitution dealing with

²⁷The decision of the legislature that a general law cannot be made applicable is binding upon the courts. *Chickasha Cotton Oil Company vs. Lamb & Tyner*, 28 Okla. 275, 114 Pac. 333.

²⁸The leading Oklahoma case on this subject is *Burks vs. Walker* 25 Oklahoma 353, 109 Pac. 544.

²⁹For example see the following chapters from the Session Laws of 1919: Chap. 116, abolishing superior courts in counties having a population between 19,990 and 20,000; Chap. 117, relating to deputies and salaries in counties having a population between 14,222 and 14,248; Chap. 267, establishing municipal courts in cities with a population over 10,000 in counties with a population between 43,000 and 47,000.

the judicial system of the state (Art. VII), with corporations (Art. IX), and with revenue and taxation (Art. X), but many other instances may easily be found. Since the constitution is beyond the power of legislative enactment to modify, the effect of these provisions is to reduce the power of the legislature over the subjects covered by them, and the more detailed and specific the constitutional provision, the greater is the limitation upon the legislature.

The reasons for the establishment of so many constitutional limitations upon legislation may be summarized as follows: first, the American political theory that there are certain individual rights which it is neither just nor expedient for the state to abridge without at least as much consideration and discussion as is involved in a constitutional amendment; second, a distrust, perhaps well-founded, of legislative bodies and a fear that, if unrestrained, they will be prone to disregard the rights of private individuals and the welfare of the public; third, a profound belief on the part of the framers of the constitution in the wisdom of certain policies and certain methods of putting them into effect, resulting in a desire to place these policies beyond legislative control by making them a part of the constitution. It may be desirable to place certain limits upon the exercise of legislative power. Certainly a very strong case can be made out in favor of establishing some fundamental individual rights and some primary governmental principles beyond the control of transient majorities. Where limitations are imposed to the extent that prevails in Oklahoma, however, the result is not entirely satisfactory. A multitude of constitutional provisions concerning the extent and the exercise of the law-making power increases immeasurably the chances of conflict between the constitution and a statute. Those unfavorably affected by a law

have always the hope that an appeal to the courts will result in a declaration that the objectionable statute is void, and no law can be definitely considered binding until it has met the test of the judiciary. Such uncertainty fosters a disrespect for law, and a consequent tendency to disregard it. Moreover, the power of the legislature to deal effectively with the great public needs is diminished by constitutional restrictions upon its sphere of action. The result is inefficiency in the state government and a decreased quality of the legislature itself, since men of ability are not attracted to service in an impotent body. Finally, the inclusion in the constitution of detailed provisions of a statutory character causes delay in the amendment of such provisions when changed conditions render a new policy desirable.

The presiding officer of the house of representatives is termed the speaker, and is elected by that body.³⁰ In practice, he is the choice of the caucus of the majority party in the house, since the two parties nominate their candidates for this position in caucus prior to the opening of the session, and voting follows strict party lines. The speaker occupies the most influential place in the legislature, and is one of the most important figures in the state government. This importance is due to the fact that the speaker, in the legitimate exercise of the powers conferred upon him, may wield a powerful influence upon the course of legislation in the house. As presiding officer, he guides the course of debate through the recognition of members seeking the floor, and rules upon points of order and parliamentary procedure, subject to the right of the house to overrule his decision. All communications to the house are made through him. He appoints the members of all

³⁰Const., Art. V., Sec. 29.

standing committees, although the wishes and opinion of the majority party caucus, or of the leading members of that party, are given great weight in the determination of committee assignments. By the exercise of this power, the speaker may determine very largely the attitude of committees toward the bills which they consider. The speaker also determines to what committee a bill shall be referred, and thus to some degree secures for it either favorable or unfavorable consideration. The house also elects a speaker pro tempore to preside in the speaker's absence. Other employees, as clerks, stenographers, doorkeepers, etc., are either elected by the house or their appointment is left to the speaker, subject to confirmation by the house.³¹

The lieutenant governor is ex officio president of the senate. A president pro tempore is chosen to preside in his absence.³² The powers of the presiding officer of the senate are more limited than are those of the speaker, since he does not have the power of appointing committees and the senate procedure is more liberal and independent of the chairman's control. Minor employees are elected by the senate³³. The legislature is not allowed to increase the number of its employees nor their compensation during the session at which the law providing for the increase was passed.³⁴

Approximately one thousand bills are introduced at each regular session of the legislature. At special sessions, the limitation of legislative action to those subjects recommended for consideration by the governor, tends to keep down the number of embryo statutes. The large number of bills and the practical limits placed on sessions by the

³¹Bunn Supp. Sec. 8115a, S. L. 1915, Ch. 264.

³²Const. Art. V, Sec. 28.

³³S. L. 1915, Ch. 264.

³⁴Const. Art. V, Sec. 49.

constitution, render it absolutely impossible for each bill to receive full consideration by the legislature. This has resulted in the creation of standing committees to each of which are referred for special consideration the bills dealing with matters within its jurisdiction. In the eighth legislature the number of standing committees of the house of representatives was fifty-four, of the senate, forty. Besides these standing committees, special committees may be appointed if need for them arises.

In the house, members of committees are appointed by the speaker at the beginning of the legislative session. In making these appointments he pays a good deal of attention to the opinion of the leaders of his party in the house, as expressed through informal conferences and in the caucus. The constitution provides that the senate shall elect its standing committees by majority vote.³⁵ A committee on committees whose membership varies is selected by the majority party. In the eighth legislature this committee consisted of one member from each of the original supreme court districts and two from the state at large. The committee on committees prepares a tentative assignment of membership on the various committees, taking into consideration the recommendations of the minority party in filling the places allotted to it, and submits this assignment to the majority caucus. The "slate" as ratified by that caucus is submitted to the senate which adopts it as a matter of course.

The standing committees act as the agents of their respective houses for the consideration of bills and resolutions referred to them. Every bill or resolution is referred to its appropriate committee in the usual course of procedure, but by unanimous consent, or under suspension of the

³⁵Const. Art. V, Section 28.

rules, this reference may be dispensed with. Reference to a committee is made by the presiding officer. Frequently the author of a bill requests that it be referred to a certain committee or committees. Committees have power to hold hearings and take testimony concerning bills or resolutions referred to them. The author of a measure must be given an opportunity to be heard. The rules provide that a committee report must be returned to the house within ten days after the subject matter has been referred, unless an extension of time is granted. In practice this rule is not followed strictly, but either house may exercise the right to call up a measure from one of its committees after the expiration of the ten day period. The report of a committee is, of course, only a recommendation and is not binding upon the house to which it was made. Such recommendations are frequently disregarded, but the tendency of both the house and the senate is to accept and follow the recommendations of their committees, which, therefore, exert a very effective influence upon legislation. A place upon one or more of the influential committees is the desire of every energetic and ambitious legislator.

The party caucus, although an unofficial and extra-legal institution, often exerts an important control over legislative action. A caucus is simply a meeting of the members of a party in either house for the purpose of discussing and determining party legislative policy. Caucus meetings are held by the senators and representatives of both parties at the beginning of each session. At these meetings the party candidates for president pro tempore of the senate and speaker of the house are chosen, and the caucus is organized by the selection of a chairman and secretary. The chairman of the caucus in each house ordinarily becomes the floor leader of his party for the legislative session and is in charge of the parliamentary tactics of the

party. Subsequent meetings of the caucus are called from time to time as occasion requires. A member attending a caucus is considered bound in honor to abide by the decision of the caucus and to support that decision in the house. Ordinarily, however, only the most important matters, or those involving political issues between the parties, are made the subject of caucus action. The caucus is often denounced as an organ of partisan political activity, and as a means of shackling the independent and conscientious performance of their duties which is required of legislators by their oath of office and their obligations to the people. In practice, however susceptible of abuse, it seems to be absolutely necessary as a means of securing party harmony and unity of action upon important issues.

The process of legislation is based upon the parliamentary practice followed by the lawmaking bodies of Anglo-Saxon countries. Each house is given the right to adopt its own rules of procedure, subject, of course, to constitutional limitations.³⁶ The committee on rules of each house at the beginning of the session submits rules for adoption which are based on those used by previous sessions. The rules as adopted may be amended during the session by the procedure prescribed therein, or may be suspended on special occasions, by a two-thirds vote. The intricacies of legislative procedure make an attempt to describe in detail the process of legislation extremely liable to error. However, it is believed that the succeeding paragraphs constitute an accurate account of the general procedure through which a bill passes in becoming a part of the law of the state.

Bills may be introduced by any member, and may originate, with the exception of revenue bills, in either house.

³⁶Const., Art. V, Sec. 30.

In the house of representatives, a bill, when introduced, is read the first day by title only. On the next legislative day it is again read by title. At this time amendments to it may be offered, but in practice this is never done. The bill is then referred to its appropriate committee by the speaker, and receives at the hands of the committee the consideration previously described. The committee may report on the bill as introduced, may propose amendments, or may even prepare a substitute bill if it originated in the house. If the committee recommends in its report that the bill "do pass," it is printed and placed on the calendar as a matter of course. If the recommendation is that the bill "do not pass," it is not printed nor placed on the calendar unless the committee recommends such action, or unless the house orders the bill printed. The report may be "without recommendation," in which case the house may and ordinarily does, order that the bill shall be printed and placed on the calendar, since such a report indicates that the committee has not given the matter adequate consideration, and is passing the responsibility to the house. In case both majority and minority reports are submitted by the committee, the bill is read at length, and after ten minutes' debate, equally divided, the question is taken as to the adoption of the majority or the minority report.

The next regular step in the process of law making, which, however, may be dispensed with and the bill advanced to third reading and final passage by unanimous consent or by suspension of the rules, is the consideration of the bill in committee of the whole. The bill is printed and placed on the calendar under the head of "general order." In forming the committee of the whole, the speaker leaves the chair and calls on some member of the

house to preside over the deliberations of the committee. Procedure in the committee is in accordance with general parliamentary law and the rules of the house, so far as they are applicable. The procedure is, however, somewhat less technical than in sessions in the house. Motions to lay on the table are not in order. The motion of the "previous question," which is used in the house to cut off debate upon a measure, is not employed in committee of the whole. The yeas and nays are not taken upon any question. The rule forbidding a member to speak twice upon any question except by unanimous consent is not applied to meetings of this committee. The result of these modifications is that the committee of the whole is more adapted to the discussion and perfection of bills than is the formal session of the house, and the general practice is that all bills are referred to it. As the close of the session draws near, however, frequent use is made of the right of the house, to advance bills to third reading and final passage without reference to the committee of the whole. A bill on being considered by this "committee" is first read at length and then is read and considered, section by section. At this time amendments may be offered, and in fact any amendments that the house makes will generally be made in committee of the whole. Each section, as considered, is accepted or rejected. Then the question is taken upon the issue of recommending to the house that the bill "do pass." If this vote results in the affirmative, the bill is engrossed and placed upon the calendar of the house under the head of "third reading and final passage."

Third reading and final passage is the last step in the passage of a bill by the house. Ordinarily a bill which has been acted on favorably in committee of the whole has little danger of failing upon final passage, but if the division of sentiment is close its enemies may succeed in

winning enough votes to insure its defeat, and it would be highly erroneous to say, as is sometimes said, that the vote on final passage simply amounts to a ratification of the action in committee of the whole. Debate on third reading and final passage is limited to thirty minutes evenly divided between the friends and enemies of the bill. Amendments may not be made, but the bill may, upon motion, be recommitted to the committee of the whole with instructions to amend in a certain manner. If the bill is passed upon third reading the speaker so announces and signs the engrossed copy in open session.

Procedure in the senate is practically the same as in the house of representatives. Some differences in the rules of the two houses make for a simpler and easier method of transacting business in the upper house, and this is facilitated by the smaller size of that body and the greater experience of its members.

A bill passed by the house in which it originated is sent to the other house for consideration in accordance with the same procedure as applies to the treatment of bills originating in that house. Each chamber sets aside certain days which are to be given over to the consideration of measures coming from the other. In case amendments to the bill are adopted by the second chamber, the bill as amended is returned to the house in which it originated. This house may agree to the amendments or it may reject them. If the amendments are rejected, the second house may either recede from its amendments or insist upon them. If the latter course is chosen, the bill is referred to a conference committee of three members from each house who consider the points of difference and attempt to reach an agreement. If the conference committee adopts a plan of agreement, it is submitted to the houses for acceptance or rejection. In case one or both houses fail to accept the

committee report, a second conference committee is appointed. If no agreement can be reached upon the bill, it is lost.

A bill, having been passed and agreed upon by both houses is enrolled, i. e. written out in longhand, and after comparison with the original by the committee on engrossed and enrolled bills, a joint committee of seven members from each house, is reported back to the houses³⁷. This must be done within three days from the passage of the bill. The bill is then signed by the presiding officer of each house in open session. The constitution provides that the bill shall be read at length prior to such signing, but by a two-thirds vote this may be dispensed with, and generally is.³⁸ .

Bills passed by both houses and signed by the presiding officers are transmitted to the governor for his signature by the committee on engrossed and enrolled bills^{38a}. If he fails to approve of a bill, he may veto it, that is, return it with his objections to the house in which it originated. Resolutions requiring the assent of both houses are also subject to veto. If a vetoed bill is re-passed by a two-thirds vote of each house, it becomes a law in spite of the governor's objection; otherwise it is lost. If the governor fails either to sign or veto a bill within five days after it has been submitted to him, the bill becomes a law without his signature, unless the legislature has in the meantime adjourned, thus preventing the return of the bill. In such a case the measure is lost un-

³⁷In practice, the enrollment of a bill is done by the clerical force and under the supervision of the committee members of the originating house, without assistance from the other chamber.

³⁸Const. Art. V, Sec. 35.

^{38a}This procedure is that prescribed by the rules. In practice the bill is delivered by a messenger from the house in which the bill originated.

less approved by the governor within fifteen days after such adjournment³⁹. The governor may veto items in appropriation bills.⁴⁰ However, a bill which simply appropriates a lump sum of money for a certain purpose, with provisions specifying the different items for the distribution of this sum, contains but one item, in the meaning of the constitution, and therefore, the governor may not veto any of the items of disbursement.⁴¹ As to whether the governor has the power to reduce items in an appropriation bill without disapproving them in toto, no decision has yet been rendered in this state. The holdings in other states having similar constitutional provisions are in conflict^{4a}.

No law may become effective until ninety days after the adjournment of the session of the legislature at which it was passed. Laws "carrying into effect pro-

³⁹Const. Art. VI, Sec. 11.

⁴⁰Const. Art. VI, Sec. 12.

⁴¹Regents of the State University v. Trapp, 28 Okla. 83, 113 Pacific. 910.

^{41a}When a bill has been enrolled, signed by the presiding officers of the senate and the house, approved by the governor, it is conclusively presumed to have been passed in accordance with all of the constitutional requirements as to procedure, and in the form in which it was enrolled. The courts will not then look to the legislative journals in order to impeach the enrolled bill. *A. T. & S. F. R. Co. v. State*, 28 Okla. 94, 113 Pac. 921; *Coyle v. Smith*, 28 Okla. 121, 113 Pac. 944; *McNeal v. Ritterbusch*, 29 Okla. 223, 116 Pac. 778. As to whether this rule would be applied to those matters which are by the constitution expressly required to be entered upon the journals, the court in the above cases has expressly refused to indicate its opinion. The entire rule has been severely criticized as tending to open the door to fraud, irregularity and the disregard of constitutional restrictions in the enactment of laws. On the other hand, if the courts may search the legislative journals to determine the validity of statutes, it adds another element of uncertainty as to what the law really is, especially where so many and such detailed restrictions as to procedure are imposed upon the legislature as are found in our constitution, and apparently this argument has seemed the better to the Oklahoma court.

visions relating to the initiative and referendum," general appropriation bills, and emergency measures are exceptions to this rule. Emergency measures are "only such measures as are immediately necessary for the preservation of the public peace, health, or safety."⁴²

Laws providing for the grant of franchises or licenses for a term of more than one year, or for the purchase or sale of real estate, or for the renting or encumbrance of real property for more than one year, may not be declared to be emergency measures. Subject to this restriction, the existence of an emergency is a matter for legislative determination, and a declaration by the legislature that an emergency exists is binding upon the courts.⁴³ Emergency measures may be vetoed by the governor, and a three-fourths vote is required to override this veto.⁴⁴ Laws to which the emergency clause has been attached take effect immediately upon approval by the governor, or upon repassage over his veto.⁴⁵ For this reason the clause is frequently used, even in cases where no reasonable person could believe that an emergency really exists.

Lawmaking is not the sole function that is placed upon legislators by our state constitution. There are a number of activities which do not pertain strictly to the making of law which are assigned to the legislature of Oklahoma. These include the impeachment of state officers, with the accompanying power of investigation, the

⁴²Const. Art. V., Sec. 58.

⁴³In *Re Menefee, et al.*, 22 Okla. 365, 97 Pac. 1015; *Oklahoma City v. Shields*, 22 Okla. 265, 100 Pac. 559; *Brown v. State*, 3 Oklahoma Criminal, 475, 106 Pac. 975.

⁴⁴Const. Art. V., Sec. 58.

⁴⁵*Norris et al. v. Cross*, 25 Okla. 287, 105 Pac. 1000.

canvassing of election returns, and the confirmation by the senate of certain gubernatorial appointments.

“An impeachment is the prosecution, by the House of Representatives, before the Senate, of the Governor or other elective state officer, under the Constitution, for wilful neglect of duty, corruption in office, drunkenness, incompetency, or any offense involving moral turpitude committed while in office.”⁴⁶ Impeachment of the governor and other elective state officers for the misconduct stated above is provided for by the constitution⁴⁷⁻⁴⁹. The charges are preferred by the house of representatives, while the senate acts as the court of impeachment before which the case is tried. The chief justice of the supreme court of the state, or an associate justice, presides over the senate during impeachment trials. In case of the absence or disqualification of all members of the court, or if a member of the court is being impeached, the senate chooses its presiding officer⁵⁰. A two-thirds vote of the senators present is necessary to conviction, and the only punishment which may be imposed is removal from office⁵¹. However, impeachment does not bar a prosecution for crime in the state courts, based on the transaction which formed the subject of the impeachment. Impeachment procedure, so far as it is not prescribed by the constitution, is subject to the reg-

⁴⁶S. L. 1915, Ch. 131, Sec. 5.

⁴⁷Const. Art. VIII, Sec. 1.

⁴⁸District judges and members of the legislature are not subject to impeachment. *Maben v. Rosser et al.* 24 Okla. 588, 103 Pac. 674.

⁴⁹By a precedent established by the senate in 1921, an offense “involving moral turpitude” not connected with the official duty of the accused person does not constitute a basis for impeachment proceedings unless he has first been tried and convicted of the offense in an ordinary court.

⁵⁰Const. Art. VIII, Sec. 3.

⁵¹Const. Art. VIII, Secs. 4 and 5.

ulation of the legislature, and is provided for by an act passed in 1915⁵².

Impeachment is a very unsatisfactory and extremely inefficient method of dealing with incompetent, immoral, or corrupt officials. Five impeachments have occurred since statehood, two of which have resulted in conviction. The procedure is cumbersome and difficult to set in motion. There is, too often, a tendency to base impeachment charges on political grounds, and the trials are equally subject to partisan influence. The institution of impeachment was indispensable when ministers and judges were the creatures of a divine right monarch and the legislature was the only popular element of the government. In a state where democratic control extends to all public servants and the doctrine of separation of powers is observed, it is useless at its best, and when used as a weapon of partisan warfare it becomes subversive of the common good. Responsibility for official misconduct could be much better enforced through prosecution in the ordinary courts, with the provision that conviction in such a case should automatically result in removal from office.

The legislature is invested with the duty of canvassing the returns of the elections for all elective state officers. This is done at a joint meeting of the house and senate immediately after the regular session convenes. In the unlikely event of a tie vote, the legislature, by joint ballot, chooses one of the tied candidates to fill the office⁵³.

While the most important executive officers of Oklahoma are chosen by popular vote, there are numerous minor functionaries, boards and commissions whose ap-

⁵²Session Laws 1915, Chap. 131.

⁵³Const., Art. VI, Sec. 5.

pointment is vested in the governor. Almost without exception, the consent of the senate is required for such appointments. Senatorial confirmation of executive appointments is generally condemned by modern political commentators. The points in the indictment against it are that it decreases the governor's responsibility for his appointments, and that the senate is tempted to use its power to dictate appointments and to control the administration. Executive irresponsibility we certainly have in Oklahoma, but the control of the senate over appointments plays but a small part, if any, in bringing this about. There have been practically no instances in which the senate has refused its consent to the governor's nominees, and the alleged tendency on the part of that body to dominate the state administration has not yet made its appearance here.

Throughout the United States there is a widespread dissatisfaction with the state legislatures. Their ability and their motives are alike under suspicion. This distrust of the representatives of the people holds an especially prominent place in the public opinion of Oklahoma. Conversations with men and women representing every class in the state reveal a general feeling that for the most part legislators are not all that they should be, that the legislature itself is a detriment to the state, albeit an unavoidable one, that legislative sessions are to be anticipated with foreboding, endured with patience and long-suffering, and remembered with relief at their close. The prevalence of such sentiments should arouse more than mere regret. When the people feel that no good can come from the legislature, that it cannot or will not cope with the problems of the time, faith in our institutions of government will not long endure. When faith in those institutions disappears, established order,

civil peace, security of life and property, orderly social evolution, all that supports our material and spiritual civilization, are marked for destruction. It, behooves us, therefore, to examine the basis of this feeling, to attempt an understanding of the conditions from which it springs, and to seek a remedy for those conditions.

Let it be said first that much of the popular criticism of our lawmakers is unjustified in fact. Gross corruption does not run riot in the Oklahoma legislature. The great majority of the members are law-abiding, honest and sincere in private life, and there is no sinister alchemy in selection to public office that transmutes such a man into a corrupt and self-seeking legislator. Moreover, the legislature is not, as it is so often pictured, a "do-nothing" body. Whatever we may think about the quality of the result produced, we must admit that it is the product of strenuous labor. The member who takes his job seriously, as most of them do, finds twenty-four hours too short a time to do all that the day brings him. Committee meetings, caucuses, the preparation of measures and the study of those prepared by others, visits or messages from his constituents, the advances of lobbyists of one variety or another, the numerous informal conferences that attend the process of legislation, plus the regular routine of the daily sessions all make up a sum total of work which it seems no man could accomplish, yet many attempt it and succeed to some degree.

But despite all the good intentions and all the honest effort that are devoted to the work of the legislature, it must be admitted that the lawmaking branch of our government, judged by its fruits, falls far short of even that degree of perfection to which man's institutions may attain. "Freak" legislation is by no means uncommon. Still more common is the passage of acts that fail utterly to ac-

comply with the purpose for which they were proposed. Such failures may be due either to mistaken policy or to an inability to see how a law theoretically correct will work in practice. It is no uncommon thing for one legislature to be confronted with the necessity of repealing or amending an act of its immediate predecessor. Other measures which may be entirely wise and expedient in their policy are marred by careless or inexperienced drafting. Some of the errors due to this cause are quite amusing⁵⁴. More serious are those faults which come not from technical errors in language, but from a failure to choose means appropriate to the end which the law is to accomplish. Many of our statutes are entirely inoperative, or worse, operate ineffectively and perniciously, simply because of unskilled preparation.

Another very prolific cause of popular distrust of the legislature is the amount of time devoted, both by individuals and by groups, to "playing politics." In the best sense of the term politics—the attempt to put a certain governmental program into effect, or to crystallize that

⁵⁴Following are some examples of such errors:

The legislature of 1909 referred to the state examiner and inspector as the "state examiner and suspector." See Revised Laws 1910, Sec. 8119. See note on history of provision.

"Any person coming under the provisions of this act who shall have rendered twenty-five years for women and thirty years for men, or more of teaching service in the public schools, ten years of such service rendered by women or fifteen years of such service rendered by men may have been in public schools outside of the state, who ceases to be in the employ of the Public Schools of the State shall be entitled to an annuity in accordance with the following schedule." Session Laws, 1919, Chap. 79, Sec. 13.

A bill introduced in the eighth legislature proposed to penalize the purchase of **concealed** weapons

Chap. 204 of the Session Laws of 1915 makes an appropriation for the purpose of equipping immediate sleeping quarters at the state school for the deaf.

program in the form of an issue to be supported or rejected by the people—is a necessary and useful part of democratic government. When it is perverted into unprincipled maneuvering for partisan advantage, or into a system of barter by which local or special interests are set off against each other, it is fatal to good legislation. This is precisely what occurs in Oklahoma. The attitude of members toward measures of major importance is determined by their party tie; the attitude of the party is determined by the stand taken by its opponent and by its own estimate of popular sentiment; once that attitude is determined, the party's legislative program tends to become a series of attempts to win public approval and to put the opposition in as unfavorable a light as possible. The merits or demerits of any legislative proposal must be subordinated to this program. With regard to measures that do not have an aspect of political importance, the practice of "log-rolling" holds sway. Representatives of districts possessing public institutions form a league, offensive and defensive. Members who propose local or special bills exchange votes and influence. Even the most conscientious legislators seem to feel little compunction about voting for bills with which they have no sympathy just because the author is a "good fellow" whose feelings ought not to be hurt, or because previous support of their own pet measures has imposed upon them an obligation to respond in kind. In all this traffic the interests of the public, whose agent the legislature is supposed to be, receive scant attention. Small wonder, then, that the product of this bargaining is so often detrimental to the state.

Finally, the legislature has failed to face the vital problems of the state and to attempt their solution. Legislation relating to subjects that have been topics of public discussion, that seriously affect the economic or the moral

welfare of the state, is either not attempted at all, is lost in the maze of legislative procedure, or passes one house only to fail in the other. Bills for increasing the salary of county treasurers, for establishing a session of the county court at some ambitious town, or for making some minor change in the existing statutes have a good chance to become a part of the law of the land. Remedial or constructive legislation of real importance, however, is very unlikely to receive serious consideration, still less likely to be considered favorably. Yet responsibility to the electorate for this dereliction of duty is not enforced. Talk as we may about the rule of the people, there seems to be no necessary connection between what the people wish enacted and what the legislature actually enacts. Experience of such legislative impotence or inertia accounts to a large degree for the popular contempt of lawmakers.

“Freak” or unwise legislation; imperfect drafting of laws both as to form and substance; partisan politics and legislative bargaining; irresponsibility, weakness, and evasion of vital issues; these are the sins of the legislature of Oklahoma. What are their causes; how may they be remedied? As a matter of fact, responsibility for this condition can be traced to no single cause; it is the joint product of many and diverse influences. These influences may be summarized as constitutional limitations, poor organization and inferior membership.

As has already been noted, the imposition in the constitution of an excessive number of limitations upon legislative action tends to break down that body's efficiency. These limitations reduce the area over which the legislature may exercise authority, and therefore reduce its power to deal effectively with problems as they arise. By throwing the doubt of unconstitutionality over every law, they hinder efficient enforcement of such legislation as is

passed. Finally, by reducing the power of the legislature, they make a seat in that body unattractive to many men of ability, and thus reduce the calibre of its membership. It is to be hoped that in framing our next constitution we shall return to first principles, make that document an instrument broadly organizing the structure of the government and guaranteeing such rights as are deemed fundamental, and leave to the legislature its proper task of detailed lawmaking.

Much of legislative inefficiency is due to poor organization. The reduction of compensation, after the first sixty days of the session have elapsed, results in a practical limitation of the length of sessions. Sixty days in every two years is no adequate time to be devoted to legislation for a modern American state. The first thirty days are given over almost entirely to the introduction and preliminary consideration of measures. Approximately one thousand bills—an average of seven for each member—are introduced in each session. Many of these are hastily and carelessly drawn, necessitating careful revision if they are to be made laws. The actual passage of bills is, for the most part, done in the last month, and by far the greater amount is done in the last ten or fifteen days. This results in hasty, ill-considered legislation because of lack of time to consider each measure fully, and is responsible for many mistakes in technique and policy. Moreover, the bicameral form of organization encourages partisan politics and irresponsibility. Each house attempts to shift the responsibility for unpopular action or inaction to the other. As a matter of fact, the voter, with two plausible explanations of the situation urged upon him, becomes bewildered and is unable to decide who is to blame. The difficulty of enforcing responsibility is enhanced by the fact that the elections occur ordinarily a year and a half after the adjourn-

ment of the previous session, by which time the issues there raised have been forgotten or are but dimly remembered.

Finally, it must be admitted that the quality of the personnel of our lawmaking body is not as high as it should be. Democracy at its best calls for the supervision and control of the general policy of the government by the people; it also demands that the people shall entrust the detailed work of the legislation necessary to put that policy into effect to representatives who are the intellectual and moral leaders of the state. The truth is, however, that in Oklahoma the legislature is neither below nor above the general level of the citizenship. This means that we entrust legislation—a task which requires the highest degree of intelligence and character—to a body which is of only average grade in those characteristics. It is probable that only one-third of the members of any session are really efficient legislators. These form the leaders of the assembly, but being in the minority their leadership is hampered and curtailed by the less able members. This shortage of able members may be traced to several causes. Constitutional limitations and infrequent and abbreviated sessions have, as we have seen, reduced the power of the legislature to deal effectively with the state's needs. Membership in such a body does not appeal to men of ability and ambition, and they do not become candidates unless impelled by an exceptionally well developed sense of public duty or by a hope of using the office as a means to political advancement. The low salary makes service in the legislature a financial sacrifice, and keeps out many desirable men. The smallness of legislative districts also plays an important part in reducing the caliber of the membership by facilitating the election of mediocre candidates who would automatically be eliminated if legisla-

tors were chosen from larger districts. Moreover, the large number of new members in every legislature reduces the general quality of the whole. Experience makes a fair legislator good and a good legislator better, yet, re-election is the exception, not the rule. In 1911, only 17% of the members of the house of representatives had served in previous sessions. In 1917, 1919, and 1921, the percentages of experienced men were 24, 39, and 27 respectively. Over half of the members of the house at every session are serving their first term in any legislative body. The senate contains more experienced men, partly because half of the members have held over from the previous session, partly because re-election of senators is more common, and partly because members of the house are frequently "promoted" to the senate. The fact that the senate is slightly more efficient than the house is chiefly due to the greater legislative experience of its members.

The rehabilitation of the legislature, therefore, depends not upon one but upon many factors. Because this task is so complex, because it involves the change of many things which we have come to regard as politically sacred, it will be difficult, but because the legislature is the living soul of the entire governmental organization the task must be attempted.

The first step is to abolish all but the most fundamental constitutional restrictions on legislative action, to remove from the constitution all elements of a temporary or non-essential character. A legislative reference bureau with a library and a bill drafting department should be established to aid legislators in the formulation and the technical perfection of bills. Legislative procedure should be reformed and simplified. Finally, the bicameral system should be abandoned in fa-

vor of a single chamber. The advantages claimed for the bicameral legislature are the representation of different interests in the two houses and the checking of hasty and illconsidered legislation. We have no special interests that require particular and distinct bases of representation in Oklahoma, while the reputed merits of a second house as a checking and revising body have not been apparent. Where, as with us, the houses are elected upon practically the same basis, they tend to act alike, if controlled by the same party; if opposing parties control, the result is deadlock, not revision, while the people find it impossible to enforce responsibility for the deadlock because they cannot tell who is to blame.

It seems desirable that in Oklahoma the legislature should consist of about fifty members elected from twenty-five districts. The legislative term should be fixed at four years, one-half of the members retiring every two years. Their compensation should be fixed at a sum commensurate with the importance of the office, not less than one thousand dollars per year, and provisions should be made for annual meetings with no limit upon the duration of the session. Such a body would be small enough to be efficient, yet large enough to secure the representative quality which is essential to a legislature. Election from fewer and larger districts than at present would insure the selection of abler men upon the average. Half of the members would always have had previous legislative experience, because of the use of the "holdover" principle. The presence of abler and more experienced members would decrease the tendency to play petty politics. An objection to providing for "holdover" members is that it might delay the retirement of members whose legislative record did not meet with popular approval; but since such retirement

would be delayed for only a short time, it does not seem to overbalance the value of retaining experienced men. However, it must be remembered that use of the "hold-over" principle is not essential to the program of reform herein suggested. Increased frequency of legislative sessions would mean the adaptation of the law to changed needs as they became manifest, while fixed and adequate compensation for time spent at sessions would do away with the present tendency to "steam-roll" necessary business and finish the session as soon as possible after sixty days have elapsed. The unicameral legislature would be more efficient, because the procedure of lawmaking would be cut in half and friction between the two houses eliminated; it would be more responsible to the people because they would have only one house to watch instead of two as at present and the blame for unwise or vicious legislation would rest squarely upon that house. Such a reorganization would go far toward making the legislature an asset to the state instead of a liability, a transformation which must be made in the interest of good government.

In outlining the above suggestions for reorganization of Oklahoma's legislative department, no mention has been made of the relationship between the governor and the legislature. It has been assumed that the people wished to continue the present independent status of the legislative and executive departments. However, in the chapters dealing with the state executive and with the budget system, attention has been called to the fact that this separation is very undesirable from the standpoint of administration. It is likewise a contributing factor in some of the outstanding failures of our legislative system. The fact that these two branches of government are independent, each deriving its authority directly from the people, creates

friction between them and increases the likelihood of political by-play at the expense of good government. Lack of legislative leadership has been another cause of inefficient lawmaking. Good laws cannot be framed over night, or by well meaning amateurs; they require expert knowledge and careful drafting. The governor, because of his position as head of the state administration, because of his ability to command expert technical information and assistance, is pre-eminently in the best position, if otherwise qualified, to make legislative plans. But plans, no matter how well drawn, must be transmuted into law before they are of any benefit to the state, and so long as the executive and the legislative branches of government remain separated there is no method by which the governor's plans are very likely to be made into law. His messages are listened to perfunctorily, and religiously forgotten. He has no right to introduce bills, and if he had, legislative jealousy of "executive domination" would for the most part doom them to an early death⁵⁵. Legislative irresponsibility is fostered by the fact that the power of veto is vested in an independent branch of the government. The exercise of that power, actual or threatened, furnishes an excellent way of explaining the failure of popular measures to "the folks back home."

If the governor were elected by the legislature from its own membership, and held accountable to it for the proposal of governmental policies and for the manner in which those policies were carried out, if, in other

⁵⁵Where the governor is on friendly terms with the majority in the legislature, he may prepare bills and have them introduced by some member. This has been a rather frequent practice. However, the independent selection of governor and legislature gives no guaranty that they will work in harmony, and furthermore, since the governor does not formally sponsor such bills, executive responsibility for the initiation of legislative policy is not secured.

words, a responsible type of government were established, these evils would be largely eliminated. Important legislative plans would for the most part emanate from the administration, and would therefore be much better, both in form and in substance, than is usual today. Complete democratic control would be retained, since the representatives of the people would be vested with all of their present power to discuss, amend, accept or reject proposed legislation, and would be strengthened by the fact that legislators could no longer present the governor's opposition as an excuse for inaction, to their constituents. Deadlocks between the legislature and the executive would cease, for a "break" over an important matter of policy would result in the choice of a new executive, or a dissolution of the legislature and an appeal to the people, on the part of the governor. In either case, harmony between the branches would be the eventual result. A further advantage would be, that if the legislature were the road to the governorship more men of ability and ambition would seek places in that body, and thus raise the standard of its average membership. Incidental benefit would result from the elimination of the present state wide primary and general elections for the governorship, with their costly campaigns, all too frequent "mud-slinging," and temptation to political irregularities, which, to a large extent, discourage political ambition in men of moderate means or high ideals.

Thus this recasting of the relationship between the legislative and the executive departments of our government offers many advantages. The possible arguments against it prove on analysis to be either untenable or negligible in comparison with the advantages to be gained. It does not afford opportunity for governmental

tyranny and encroachment upon individual rights. The most efficient safeguards against such evils are vigilant popular control of the government, and fundamental constitutional limitations enforced by an independent judiciary. Opportunity for exercising the first of these is amply secured by popular election of the legislators—is facilitated, in fact, since there is but one man whom the voters of each district need to reprove if the government does not suit them; while the latter is entirely consistent with a government organized on the responsible system. As has been pointed out, such an organization is entirely democratic, for the final responsibility for the government rests in the hands of men chosen directly by the people. Where the two-party system is well developed, it provides a form of government which combines stability with flexibility and responsiveness to popular control.

The decision as to whether this form of government should be adopted, however, must rest with the people of Oklahoma, after full consideration of the questions involved. It is not indispensable to the improvement and reform of our legislative and executive departments, although it is the conviction of the authors of this book that without it such reform and improvement will not be of as much value as they would be if it were adopted. A more detailed consideration of this subject, as connected with a proposed program of organization for Oklahoma's government, will be found in the final chapter.

CHAPTER III.

THE CHIEF EXECUTIVE

GENERAL PROVISIONS

The executive authority of the state is not vested in any one man but is divided among thirteen elected officials, including the Governor, Lieutenant-Governor, Secretary of State, State Auditor, Attorney-General, State Treasurer, Superintendent of Public Instruction, State Examiner and Inspector, Chief Mine Inspector, Commissioner of Labor, Commissioner of Charities and Corrections, Commissioner of Insurance, and "other officers provided by law and this Constitution." The President of the Board of Agriculture has been added to this list of executives by the legislature¹.

These officers "perform such duties as may be designated in this constitution or prescribed by law²."

Nowhere in the constitution is it definitely stated that the governor or any other of these officers shall be elected, but such phrases as "Governor and other elective officers³," the term of office shall be four years "next after their election⁴," "the state officers chosen at the first election⁵," place it beyond a reasonable doubt that the constitution intended to make these thirteen executive officers elective.

The decentralization of the state administration is made even more thoroughgoing by Section 60 of Article V. of the constitution, which provides, "the Legislature shall

¹R. L. Ok. 1910, Sec. 13.

²Const. Art. VI, Sec. 1.

³Const. Art. III, Sec. 4.

⁴Const. Art. VI, Sec. 4.

⁵Ibid.

provide by law for the establishment and maintenance of an efficient system of checks and balances between the officers of the Executive Department, and all commissioners and superintendents, and boards of control of State institutions, and all other officers entrusted with the collection, receipt, custody, or disbursement of the revenue or moneys of the State whatsoever." With the executive power distributed among these thirteen constitutional executive officers, and the power of establishing checks and balances among them placed in the hands of the legislature, it is difficult to understand what is meant by the phrase "The Supreme Executive power shall be vested in a Chief Magistrate, who shall be styled 'The Governor of the State of Oklahoma'."⁶ That this clause does not give him such administrative control over his fellow executive officers as is usually associated with executive power seems clear from a statement of the court to the effect that "the state executive officers below the Governor, with a few exceptions, are as independent of his control in the performance of their duties as are the officers of the counties or of the townships."⁷ And it is a well-known fact that the governor exercises almost no administrative control over these officers. The court also says, speaking of the state executive officers, "None of these officers, in carrying out the mandate of the Constitution....., acts as the agent of the governor."⁸ A Kansas court, construing a constitutional provision very similar to the one under discussion, said: "the term 'supreme executive power' is something more than a verbal adornment of the office, and implies such power as will secure an efficient execution of

⁶Const., Art. VI, Sec. 2.

⁷St. ex rel. Atty. Gen. v. Huston, Judge, 27 Ok. 606, 113 Pac. 190.

⁸Ibid.

the laws, to be accomplished, however, in the manner and by the methods and within the limitations prescribed by the Constitution and statutes, enacted in harmony with that instrument.”⁹ The same thing may be said regarding the executive power in Oklahoma. The governor does not derive any general power from the fact that the “Supreme Executive power” is vested in him but may only avail himself of such power as the constitution expressly gives him or as the legislature, acting under the constitution, may specifically grant him.

He does, however, occupy an important position legally by virtue of this section. While all the other executive officers may be forced by the courts, through a writ of mandamus, to perform the duties laid upon them by the constitution and laws of the state, or be restrained from official misconduct by a writ of injunction, the governor is not subject to such control¹⁰. In refusing to issue a writ of injunction against the governor the court has held: “The question of jurisdiction is squarely raised by the counsel for the Governor, and we conclude that the courts of this state may not control the actions of the Chief Executive of the state. But a tribunal other than the courts must be resorted to for a correction of his official wrongs, if any, to wit, the Legislature.”¹¹ In view of these statements of the court, then, it would seem that the chief significance of the supreme executive power is

⁹St. ex rel. Stubbs v. Dawson, 86 Kan. 180, 119 Pac. 360, 39 L. R. A. ns 993.

¹⁰Norris v. Cross, Sec. of St. 25 Ok. 287, 105 Pac. 1000; St. ex rel Dunlop, St. Treas., v. Cruce et al, Com’rs. of the Land Office, 31 Ok. 486, 122 Pac. 237; City of Ok. v. Haskell, 27 Ok. 495, 112 Pac. 992; State ex rel. Atty. Gen. v. Huston, Judge, 27 Ok. 606, 113 Pac. 190, 34 L. R. A. ns 380.

¹¹St. ex rel. Atty Gen. v. Huston, Judge, 27 Ok. 606, 113 Pac. 190.

that it places the governor in a higher position in respect to the courts than the other executive officers occupy.

QUALIFICATIONS

Every citizen of Oklahoma is eligible for the office of governor who is a "male citizen of the United States, of the age of not less than thirty years, and who shall have been three years next preceding his election, a qualified elector of this state."¹² While these qualifications are so liberal as to permit practically any man who can afford to pay the expenses of a campaign, whether he possesses any fitness for the office or not, to become a candidate for the governorship, the possibility that an incompetent or dishonest man may entrench himself for many years in this position is obviated by the constitutional provision that a governor may not hold office for two successive terms¹³. At the same time this provision makes it impossible, of course, for the people to reward a governor for efficient and praiseworthy work by retaining him in office, and also makes him quite irresponsible to the people.

NOMINATION AND ELECTION

The governor of Oklahoma is chosen at a statewide general election for a term of four years. The term begins on the second Monday in January after his election¹³.

The various party candidates for the office of governor are nominated at the regular primary election. Despite the strict limitations placed by law on campaign expenditures (a full account of which appears on another page) it is generally understood that very large sums of money are needed in order to wage a successful primary campaign in this

¹²Const., Art. VI, Sec. 3.

¹³Const., Art. VI, Sec. 4.

large state with its scattered population. Rumors are freely circulated that individuals and corporations "purchase" candidates by contributing large sums to their campaign funds in exchange for promises of certain official favors. However greatly the fair-minded inquirer may discount these rumors, he cannot help but realize that unless a man has a large private income or a strong financial backing of some sort, he cannot afford to become a candidate for the governorship. The expenses of the primary campaign, and the second campaign which the party nominee must wage before the general election, are necessarily very great, while the salary of the governor is but \$4,500. It was fixed at this figure in the Schedule to the Constitution¹⁴, passed in 1907, and has not been altered since, despite changing economic conditions.

REMOVAL BY IMPEACHMENT

The governor, as well as all other elective state officers, is liable to impeachment by the legislature for "wilful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude committed while in office."¹⁵ Since a specified method of removal is set forth it would seem that the intent of the constitution was to make the officers named subject to removal only by impeachment, that is, to place them beyond the power of legislative measures respecting removal. The house of representatives presents all impeachments, and with the house alone rests the authority to institute impeachment proceedings. The senate sits as a court of impeachment, with the senators on oath to try impartially the person impeached. A two thirds vote of the senators present is necessary to impeach an officer. Judgment of

¹⁴Schedule to the Const. Sec. 15.

¹⁵Const., Art. VIII, Sec. 1.

impeachment does not extend beyond removal from office, but this does not prevent the punishment of any such officer on charges growing out of the same matter by the courts of the state¹⁶. Regular sessions of the legislature are held only biennially, however, and special sessions may not be called by anyone save the governor. At special sessions no subjects may be acted upon save those which the governor recommends. It might seem impossible, therefore, to impeach the governor at any time other than at a regular session. While the question has never definitely arisen in Oklahoma, there are strong grounds for believing that the legislature could bring impeachment proceedings either during a special session or could convene especially for this purpose without the call of the governor.

Judge Robert L. Williams, former governor of Oklahoma, has called the attention of the authors to the fact that section six of Article eight of the Oklahoma Constitution, the article dealing with impeachments, provides that "The legislature shall pass such laws as are necessary for carrying into effect the provisions of this article." "I am of the opinion," writes Judge Williams, "that this clearly empowers the legislature to provide by statute that the house may assemble for impeachment investigation upon the call of the speaker and that the senate may assemble on call or at a fixed time after the house returns the charges." Up to the present time no such statute has been passed.

Cases involving the impeachment of former governor Sulzer of New York, and the procedure followed in the impeachment of former governor Ferguson of Texas, would seem to warrant the belief that impeachment pro-

¹⁶Const., Art. VIII, Sec. 5.

ceedings may be instituted by the legislature either upon their own motion or during a special session of the legislature.

In the case of *Robin v. Hayes* (143 N. Y. S. 324, 325), which involved the impeachment of governor Sulzer, it was held that the assembly was the sole judge of the time as to when this power should be exercised, and could convene itself for that purpose. Further, it was held that the impeachment of the governor by the assembly while in extraordinary session was valid, though the constitution expressly provided that no subject should be acted on at such a session except such as the governor recommended. The ground for this holding was the fact that the power of impeachment is a judicial power and not a legislative power and so should be independent of outside control.

In the impeachment of governor Ferguson of Texas, the house was called by the speaker to begin investigations; but before any action was taken, the governor called the legislature in special session.

If we take these cases as precedents, it would seem that the governor of Oklahoma might be impeached either during a special session of the legislature or else at a session convened by the proper officer of the legislature itself, for that purpose.

Impeachment has proved, in practice, to be a poor method of holding an officer responsible. If the majority in either the house or the senate is of the same party as the governor, it is extremely unlikely that he would ever be impeached, for impeachment proceedings nearly always become mere partisan battles. And on the other hand, threatened impeachment furnishes a strong weapon in the hands of a minority party. Even the introduction of impeach-

ment proceedings, though the group introducing them does not expect the charges to pass, injures the confidence of the people and the other administrative officials in the governor, and in view of this fact a governor would conceivably make many compromises with such a group rather than have proceedings brought against him. So, on the whole, impeachment as provided for in the Oklahoma Constitution is a very ineffectual means of holding an unscrupulous officer in check.

LIEUTENANT-GOVERNOR SUCCEEDS WHEN

“In case of impeachment of the Governor, or of his death, failure to qualify, resignation, removal from the state, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor for the residue of the term or until the disability shall be removed.”¹⁷

It has been held that the phrase “removal from the state” refers to both temporary and permanent removal, and that in the case of temporary removal the lieutenant-governor exercises the functions of the governor “until the disability is removed.” but in case of permanent removal he serves “for the residue of the term.” The governor may leave the state as he pleases, without forfeiting his office, but his powers as governor become dormant the very moment he crosses the state line, and revive again as soon as he returns within the borders of the state.¹⁸

It has been held by courts engaged in construing provisions similar to those in the Oklahoma Constitution, however, that while the lieutenant-governor exercises all the functions of the governor during the temporary absence of that executive from the state, the governor himself con-

¹⁷Const., Art. VI, Sec. 16.

¹⁸Ex parte Hawkins, 10 Ok. Cr. 396, 136 Pac. 991; Ex parte Crump,

tinues to draw the compensation attached to the office.¹⁹ In case of the removal from the state or the disability 10 Ok. Cr. 133, 135 Pac. 428.

to perform the duties of the office of governor on the part of both the governor and lieutenant-governor, the president *pro tempore* of the senate acts as governor, and in case of the absence or disability of all three of these officers, the speaker of the house of representatives succeeds to the place.²⁰ The acting governor, whoever he may be, may exercise all the executive functions of the office, for these functions "belong to the public and are confined to the state and cannot be exercised out of the state."²¹

POWERS OF THE GOVERNOR

Certain specific powers and duties are bestowed upon the governor by the constitution.²² In addition to these, other duties may be "prescribed by law"²³. In the following discussion of his powers and duties, both those set forth in the constitution and those imposed by the legislature will be considered.

POWERS IN RESPECT TO LEGISLATION

The governor's powers in respect to legislation will be considered first. These powers are not extensive; he has no control over the organization of the legislature and very little over its sessions, except in extraordinary cases; nor can he take an active part on the floors of the houses in getting a comprehensive legislative program passed. The

¹⁹Warmoth v. Graham, 26 La. Ann. 568, 21 Am. Rept. 551; State ex rel Crittenden v. Walker, 78 Mo. 139.

²⁰Const., Art. VI, Sec. 15.

²¹Ex parte Hawkins, 10 Ok. Cr. 396, 136 Pac. 991; Ex parte Crump, 10 Ok. Cr. 133, 135 Pac. 428.

²²Const., Art. VI, Secs. 6 to 14.

²³Const., Art. VI, Sec. 1.

nature of his authority is, in general, prohibitory rather than constructive.

By virtue of constitutional provisions,²⁴ regular sessions of the legislature are held biennially on the first Tuesday after the first Monday in January. The governor has no power to change the time of the beginning of this session, or to limit the matters which are discussed while it lasts. He may convoke or adjourn the legislature to a place other than the capitol when, in his opinion, the public safety or welfare or health of the members may require it, provided that two-thirds of the members of each house concur in his opinion²⁵, which simply means that he has the power of prohibiting the holding of sessions elsewhere than the capitol without his consent.²⁶ In case of a disagreement between the two houses as to the time of adjournment, the governor may, if called upon, adjourn the legislature to any date not beyond the time for the next regular session, but he may not exercise this power unless directly called upon by the presiding officer of the house first moving the adjournment.²⁷ When vacancies occur in the legislature it is the duty of the governor to issue writs of election to fill such positions.²⁸

In regard to special sessions the governor has a great deal more power, in that he may call such a session whenever in his opinion a situation arises which demands it.²⁹ It rests solely with the governor to decide when an extraordinary occasion sufficient to justify the calling of a special session exists and his discretion in the matter will not

²⁴Const., Art. V, Secs. 26 and 27.

²⁵Const., Art. VI, Sec. 14.

²⁶For construction see *Coyle v. Smith et al*, 28 Ok. 121, 113 Pac. 944.

²⁷Const., Art. VI, Sec. 14.

²⁸Const., Art. V, Sec. 20.

²⁹Const., Art. VI, Sec. 7.

be judicially reviewed.³⁰ At special sessions the subjects for discussion are limited to those recommended by the governor.³¹ Any acts passed on subjects which were not recommended by him are void.³² He has, however, no control over the time of adjournment of these sessions, or over the manner in which the subjects he recommends are passed on. His authority extends only to recommending subjects for legislation, after which the power of the legislature to enact legislation on such subjects is plenary.³³

While the governor has, then, slight authority over the time when sessions of the legislature shall begin or end, and no powers broad enough to allow him to suggest and to sponsor a definite legislative program, nevertheless he has several methods of influencing and participating in legislation. At the beginning of each session he not only may, but must, make a report to the legislature on the condition of the state, together with such recommendations as he may deem expedient. At other times during the session he may communicate such matters as he may elect, or the legislature require.³⁴ But the legislature is not bound even to consider his recommendations, least of all to put them into the form that the governor believes would best suit the needs of the state. If one or both of the houses of the legislature should happen to be dominated by a political party opposed to that to which the governor belonged, the legislative program of the executive would almost surely be discarded without consideration. Under the Oklahoma system it is perfectly pos-

³⁰*Farrelly v. Cole*, 60 Kan. 356, 56 Pac. 492; *St. v. Fair*, 35 Wash. 127, 76 Pac. 731, *In re State Census*, 9 Colo. 642, 21 Pac. 477.

³¹Const., Art. VI, Sec. 7; *In re Governor's Proclamation*, 19 Colo. 333, 35 Pac. 530.

³²*People v. Curry*, 130 Cal. 82, 62 Pac. 516.

³³*St. v. Clancy*, 30 Mon. 529, 77 Pac. 312.

³⁴Const., Art. VI, Sec. 9.

sible for this situation to occur. All the members of the house of representatives and one-half of the members of the senate are elected every two years, and the governor every four years. At the election when legislators are being elected without reference to a gubernatorial race, there may be other influences, such as a national election, which will cause a majority of members not of the governor's party to be sent back to the legislature. When this is the case it could hardly be expected that the legislature would carry out the recommendations of the governor as planning officer, or even discuss the measures which he had proposed for its consideration.

But if the governor is not in a position to get a vote on the exact legislation which will put into effect the program he desires, he may by his veto power³⁵ keep out that which seems most undesirable to him. Every bill which is passed by both houses must be submitted to the governor for his action. He may sign it, thus approving it; may hold it five days, at the expiration of which time it automatically becomes a law, unless the legislature has adjourned in the meantime; or may veto it. A vetoed bill must be returned to the house in which it originated. There the objections of the governor to it must be entered in the journal of the house and reconsideration be given the bill. It must then pass both houses by a vote of two-thirds of the members elected to each house in order to become a law over the governor's veto. In the case of emergency bills a vote of three-fourths of the members is necessary.³⁶ If because of the adjournment of the legislature the governor does not have five days in which to pass on bills, they in no case become law without his signature. Fifteen days are allotted to him after adjournment in

³⁵Const., Art. VI, Sec. 11.

³⁶Const., Art. V, Sec. 58.

which to approve bills passed during the last days of a session. This power in regard to the important legislation which is usually passed during the last few days of a session would seem to place the governor in an influential position, but what it really amounts to is that he has a choice of vetoing legislation of which he does not approve, thus letting things remain as they are, or of approving what he considers poor legislation on the subject.

In regard to appropriation bills greater power is accorded the governor.³⁷ He may veto any item of an appropriation bill embracing distinct items and yet the items not disapproved will have the force of law. Disapproved items are void unless repassed by a two-thirds vote of the legislature. The question of the governor's right to veto bills and items of bills after adjournment of the legislature was raised but not definitely decided in the case of *Carter, State Auditor, v. Rathburn*.³⁸ An appropriation for the salary of Miss Rathburn was included in the appropriation bill submitted to the governor for his action on the day the legislature adjourned. Ten days after adjournment the governor disapproved this and a few other items of the bill. With these exceptions the bill was approved. Miss Rathburn instituted suit to require the auditor to honor her claim, on the ground that the governor's veto of items of a bill when such items cannot be returned to the legislature for reconsideration was unconstitutional. The court, however, did not go into the validity of the governor's veto but held that because he did not approve the item within fifteen days after adjournment it did not become law as provided for in the constitution. A repassage by a two-thirds vote was the only method provided for making a vetoed item law,

³⁷Const., Art. VI. Sec. 12.

³⁸Okla. Appellate Court Reporter, Vol. XVIII, p. 18. See also *Regents v. Trapp*, 28 Okla. 83; and Appendix A.

hence, because the item had not become law as required by the constitution, it was void. The decision, then, actually declares void all laws not approved by the governor after adjournment, not because he has a right to veto them, but because he has not approved them. The result is the same on whichever ground the argument is based.

The right of preparing and presenting the budget is a special legislative power given to the governor by the legislature of 1919.³⁹ The various state officers and heads of state institutions are required to furnish certain prescribed financial information to the governor, and to furnish any other such information upon his request. When this material is collected, it is the duty of the governor to organize a budget which provides for all the financial needs of the state and to present it to the legislature within five days after the beginning of each regular session. The governor also submits a tentative appropriation bill covering all appropriations. The "budget bill", as it is then called, is considered in joint open session by the standing appropriation committees of each house. The governor or his representatives may sit at these meetings and have a right to be heard on any question which arises for consideration. But beyond the powers of presenting the budget and of demanding a hearing on any question concerning it, the governor's authority does not reach, for the legislature may increase or decrease any items of the budget, and may consider new appropriation bills after the governor's bill has been acted upon by both houses. These provisions make it possible in the first place, for the legislature to so alter the governor's budget that it in no degree approaches the financial program he had asked for, or, by means of the second provision, to vote against the

³⁹S. L. Ok. 1919, Ch. 142.

executive budget and then to substitute an entirely new one.⁴⁰ It is apparent, then, that the governor cannot be held responsible for the budget as it is finally passed.

But while the governor's powers in respect to legislation are not broad, he has several extra-legal methods of participating in it. One of these lies in the possibility of using the veto power as a weapon of offense as well as a means of prohibiting specific bills. This he may do, with considerable effect, by making it known that he will veto certain bills which a powerful group is sponsoring unless that group lends its aid to certain others that he desires. Another method, and one which adds considerable influence, lies in a discreet use of his power of appointment. By appointing friends of influential members of the legislature to the administrative positions which it is his duty to fill he may gain the co-operation of these members in putting through bills which he favors. Still another circumstance which sometimes gives him an opportunity to have a hand in legislation is the fact that he may be the leader of his party. If he happens to be, and if his party is in the majority in the legislature, he may influence its legislative policy in such a way that the bills passed will provide the means for carrying on a definite administrative program. The strength of his position as leader of his party, however, even where he has it, is considerably lessened by the fact that often the existence of party factions prevents the establishment of a party policy in regard to administrative affairs. But he has still another method of recourse when party members become obstreperous. Through publicity he may draw the attention of the people of the state to the issues under discussion. Then, if his program is such as to gain the favorable opinion of the people, legislators may

⁴⁰Further comment on the budget is given in chapter XII, The Appropriation and Budget System of the State.

be forced, in order to please their constituencies, to vote for bills that they otherwise would not approve of.

While, then, the governor is not without some influence over legislation, since he has important powers as to special sessions, the right of veto, and several extra-legal methods of applying pressure to secure the passage of a law which he favors, he does not have sufficient power to make him definitely responsible for the laws controlling state administration.

POWERS AND DUTIES IN RESPECT TO ADMINISTRATION

The chief executive in Oklahoma has many detailed administrative powers, but no broad general power of controlling and directing the administration. The heads of most of the important executive departments are elected by the people and are independent of the governor; local officials are also almost wholly independent.

Twelve executive officers in addition to the Governor, namely, the Lieutenant-Governor, the Secretary of State, the Treasurer, the Auditor, the Examiner and Inspector, the Commissioner of Labor, the Commissioner of Charities and Corrections, the Chief Mine Inspector, the Insurance Commissioner, the President of the Board of Agriculture, the Superintendent of Public Instruction, and the Attorney-General, are elected at the general state-wide election.⁴¹ The duties of these officers are prescribed by the constitution and by law.⁴² By virtue of this fact the administrative departments of the state are beyond the power of the governor to control. Neither the fact that

⁴¹The Corporation Commission exercises administrative powers in a special field, which is distinctly separate from the general administration of the state, and, therefore, will not be considered in connection with the executive power.

⁴²Const., Art. VI, Sec. 1.

he is the supreme executive of the state nor the fact that it is his duty to cause the laws of the state to be faithfully executed⁴³ gives him any control over the work of these elective officers. He may not direct the execution of the laws which it is their duty to administer, place any duties upon them, remove them from office for any cause, or otherwise exercise any of the powers which are generally considered to be the prerogatives of a chief administrative officer. In causing the laws of the state to be faithfully executed, it is not his duty to execute the laws, but to observe carefully the manner in which the different officers of government exercise their functions and execute the laws committed to their charge. In case they fail to perform properly their legal duties it is his duty to bring the subject to the cognizance of that department of government which has power to remove or punish the delinquents.⁴⁴ The Oklahoma supreme court, discussing the powers of the governor in respect to the state examiner and inspector under the clause which makes it the duty of the governor to see that the laws of the state are faithfully executed, says: "Obviously, the duties of the State Examiner and Inspector, as prescribed by the Constitution, are to be discharged by him independent of the Chief Executive of this state. It is not within the power of the Chief Executive to prevent the State Examiner and Inspector from discharging any duty imposed upon him by virtue of the Constitution or the statutory law as in force in this state. The duty of the Chief Executive arises when the State Examiner and Inspector fails to discharge his duty, it then being the duty of the Chief Executive to see that the laws are faithfully executed and

⁴³Const., Art. VI, Sec. 8.

⁴⁴Shields v. Bennett, 8 W. Va. 75; Richardson v. Young, 122 Tenn. 471, 125 S. W. 66.

that all executive officers discharge the duties imposed upon them by law.”⁴⁵ The governor, then, may call the attention of the legislature, which alone has power to remove state elective officers,⁴⁴ to the failure of any particular state officer to perform his duty, and ask for its action; or, in the case of any illegal act of omission or commission on the part of such independent executive officer, may take steps through court action to force him to execute the law. Impeachment, however, is an extremely ineffective weapon for securing administrative harmony. It can only be exercised during a regular session of the legislature or by the calling of an expensive special session. A chief executive would be loath to use it if the delinquent officer were a member of his own party, and the legislature would hardly remove him if he were a member of the party which was in the majority in either house. The greatest objection, however, to impeachment as a means of removing objectionable administrative officers lies in the fact that many acts of such officers which interfere with administration are not impeachable offenses. Such an officer might well refuse to work in harmony with the other officers, but yet be performing all his legal duties.

The other method by which the governor may cause the laws of the state to be faithfully executed, namely, court action, must be considered with care, in order to ascertain to what extent it makes the governor a real administrative head. Pronouncements such as the following make it obvious that the courts will force any state officer, with the exception of the governor, to perform an administrative act, upon the request of another. “Whatever contrariety of opinion may have, at one time, existed on the subject, it is now a settled principle that a peremptory

⁴⁵State v. Cockrell, 27 Ok. 630, 112 Pac. 1000.

⁴⁶See discussion above as to removal by impeachment.

mandamus will go to state officers, such as auditor, treasurer, . . . for the purpose of coercing performance of purely ministerial duties devolving on such officers by law.”⁴⁷ “The state is sovereign, and cannot be sued by her citizens, in her own courts, without her permission; but a civil proceeding, by which one officer of the state seeks to compel another officer of the same state to perform a ministerial duty, is not, in the proper sense of the words, a suit against the state.”⁴⁸ The “right of the governor to bring suit in the name of the state, in all matters *publici juris*, is placed upon the high ground of his duty, under the constitution of the state, to cause the laws to be faithfully executed. . . .”⁴⁹ The governor, then, may go into the courts to obtain a restraining order against a state officer to prohibit him from doing that which the law does not allow him to do, or may obtain a writ of mandamus to force him to perform a ministerial duty which the law imposes upon him.

The attorney general occupies, by virtue of the statutory provisions prescribing his duties, a somewhat different position in relation to the governor than do the other executive officers. He shall when requested by the governor or either branch of the legislature, appear for the state and prosecute or defend in any other court (beside the supreme court and the criminal court of appeals) or before any officer, in any cause or manner, civil or criminal, in which the state may be a party or interested. “It shall be the duty of the attorney general, at the request of the governor, auditor, or treasurer, to prosecute any official bond or any contract in which the State is

⁴⁷Quoted with approval in *St. v. Huston*, Judge, 27 Okla. at page 628 from *St. v. Nichols*, Gov., 42 La. Ann. 209.

⁴⁸Quoted with approval in *St. v. Huston*, Judge, cited above, from *St. v. Jumel*, Auditor, 30 La. Ann. 863.

⁴⁹*St. v. Huston*, et al., 21 Ok. 782, 97 Pac. 982.

interested upon a breach thereof, and to prosecute or defend for the State all actions * * * * relating to any matter connected with either of their departments.”⁵⁰ It was decided⁵¹ under the territorial statute which is practically the same as the above quoted law that the attorney general has no power to bring suit in the name of the state, or to prosecute or defend any action in which the state may be a party, or interested, in a district court, except upon the request of the governor or either branch of the legislature. The statutes, then, have added to the governor’s constitutional power to control through court action the performance by state officers of their ministerial duties, a certain amount of control over the official functions of the attorney general.

But while these legal remedies afford the governor some opportunity of control in case of legal defalcation on the part of the officers, the relation existing between the chief executive and the other officers is legal and not administrative.

To assist the governor in causing the laws of the state to be faithfully executed, it is provided that all state officers, commissioners, and officers of state institutions must furnish semi-annual financial reports to the governor, and furnish to him, upon his request, any information relating to their respective offices and institutions which he may desire.⁵² From these reports it is presumed that the governor can ascertain whether or not the officers reporting are discharging the duties imposed upon them by law. As a matter of fact, however, the governor does not have a sufficient staff to check up on these reports and find out whether or not the work is be-

⁵⁰R. L. Okla. 1910, Secs. 8057 and 8058.

⁵¹St. v. Huston, et al., 21 Ok. 782, 97 Pac. 982.

⁵²Const., Art. VI, Sec. 33.

ing carried on in the best way, from an administrative standpoint. The reports as a rule are detailed in the extreme, have no summary, draw no significant conclusions, and hence afford little help to the governor.

The legislature has added only one officer to be elected at large to the twelve provided for in the constitution.⁵³ As new conditions which demand state supervision or state action have arisen, the duties in connection therewith have in some cases been placed on already existing officers, but usually they have been given to new appointive officers, boards, or commissions. The privilege of selecting many of the officers to carry on these new activities has been given to the governor, thus placing him in a position of some responsibility as regards these fields of work. His authority, and hence, the degree in which he may be held responsible, even where he has the appointing power, has been limited to a great extent, however, by legislative assignment of duties, fixation of salaries, and restrictions on the appointing and removal power.

The governor appoints some fifty-five more or less important state officers and boards. His discretion in regard to the selection of these agencies is limited by legislative restrictions in all save seven cases. Those in reference to which he has a free choice are: the board of control of military training⁵⁴; the board of commissioners for the promotion of uniform state laws⁵⁵; the pardon and parole attorney⁵⁶; the state cemetery board⁵⁷; the Americanization commission⁵⁸; the board of managers of

⁵³R. L. Okla. 1910, Sec. 13.

⁵⁴S. L. 1917, Ch. 246.

⁵⁵S. L. 1910-11, Ch. 151.

⁵⁶S. L. Ok. 1919, Ch. 66.

⁵⁷Ibid, Ch. 153.

⁵⁸Ibid, Ch. 315.

state eleemosynary institutions⁵⁹; and the state commissioners of health⁶⁰. Of these seven only two, the board of managers of eleemosynary institutions, and the state commissioner of health, possess broad administrative powers; the others, for the most part, carry on definitely assigned duties within a narrow field.

The limitations upon the governor's appointing power may be classified as: professional experience qualifications; residence requirements; professional nomination requirements; special partisan interest restrictions; political restrictions: locality restrictions; special business interest requirements; and the necessity of the advice and consent of the senate.

The limitations as to professional experience are designed to insure that the governor's choice will lie within the bounds of those actually qualified to carry on the duties of the office; and do not, therefore, interfere in any real way with his discretion as to the particular person who shall fill the place. For the most part the laws require, first, that persons who may be appointed to certain professional boards must be able to show proof, by way of degree or otherwise, of sufficient education to make them qualified to practice their profession; and second, that they shall have been engaged in the practice of such profession in this state for a designated number of years prior to their appointment. The chief positions which are thus limited are membership in examining and licensing boards, such as the board of examiners of optometry⁶¹, to be eligible for which a man must be an optometrist who has practiced in the state for five years; and the board

⁵⁹Ibid, Ch. 188.

⁶⁰R. L. Ok. 1910, Sec. 6786.

⁶¹S. L. 1910-11, Ch. 20.

of chiropractic examiners⁶², the members of which must be graduates of reputable chiropractic colleges and have practiced in this state for at least five years just preceding their appointment as members of the board.

In addition to these professional education and experience restrictions on the governor's power of appointing the members of examining and licensing boards, there is the requirement, which applies to five of these boards, as well as to several others, that persons who are selected must have been nominated by the recognized state association of their profession. For example the executive council of the state bankers' association submits to the governor a list from which the banking board^{62a} must be chosen, and the state central committees of each of the two leading political parties choose the lists from which the two appointive members of the election board^{62b} are selected. Provisions are made to enable the governor to appoint members of all these boards, however, if nominations are not made by the respective associations within a specified time. These limitations may actually give the class of people most directly interested greater control over the board which regulates their profession, but at the same time it considerably hampers the governor's choice of qualified men.

Another group of limitations under which the governor makes appointments to certain offices is that which narrows the list of eligible persons to those who have a special and peculiar partisan interest in the work to be carried on. Among the boards and officers subject to such restrictions are the board of control of the Union Soldiers'

⁶²S. L. Ok. 1921, Ch. 7.

^{62a}S. L. Ok. 1913, Ch. 22.

^{62b}S. L. Ok. 1913, Ch. 157.

Home⁶³; the board of trustees of the Confederate Soldiers' Home⁶⁴; the custodians⁶⁵ of the two memorial halls in the state capitol, one of whom must be a Confederate veteran, the other a Union veteran; the Confederate Memorial Commission⁶⁶; and the commissioner of pensions⁶⁷, who must be a Confederate veteran or the descendant of one.

Political considerations limit the governor's power in regard to the appointment of only three boards. These are the board of affairs⁶⁸, no more than two of the three members of which may be of the same political party; the state election board, the two appointive members of which must be taken one from each of the leading parties; and the board of directors of the State Exposition⁶⁹, no more than a majority of whom may be of the same party.

The governor may choose men from any part of the state for the offices to which he appoints, except in the cases of the text-book commission and the board of trustees of the state teachers' retirement and disability fund. It is provided that not more than one member of the text-book commission⁷⁰ may be from any single congressional district, and that no two members of the board of trustees of the state teachers' retirement and disability fund⁷¹ may be from the same county.

The membership of another group of important boards and commissions is limited to those who by virtue of busi-

⁶³S. L. Ok. 1917, Ch. 271, as amended by S. L. 1919, Ch. 146.

⁶⁴S. L. Ok. 1910-11, Ch. 49.

⁶⁵S. L. Okla. 1921, Ch. 27.

⁶⁶S. L. Ok. 1917, Ch. 115.

⁶⁷S. L. Ok. 1919, Ch. 15.

⁶⁸R. L. Ok. 1910, Sec. 8079.

⁶⁹S. L. Ok. 1917, Ch. 19.

⁷⁰S. L. Ok. 1919, Ch. 12.

⁷¹S. L. Ok. 1919, Ch. 79.

ness experience or other connection with work related to that of any board or commission are especially qualified to perform its duties. For instance, the state mining board⁷² must be composed of two coal miners, one mining engineer, one coal operator, and one hoisting engineer. Only farmers of at least five years' experience after they have become twenty-one years old are eligible to become members of the state board of agriculture.⁷³ The bank commissioner⁷⁴ must have had at least five years' practical experience before his appointment, but cannot be connected with any bank after such appointment. Such qualifications serve to insure to those affected by the work of each of the boards and commissions regulation by persons who have a personal knowledge of, and interest in, the duties connected with their office.

But in addition to all these qualifications, which, after all, except in a few cases, do not seriously interfere with the governor's free choice of competent men for the various offices, there is one restriction which is extremely broad in its consequences, that of the necessity of having the senate's advice and consent in appointing to practically all the important positions. The governor must have this senatorial approval in the selection of the members of twenty-three out of the total fifty-five officers and boards that he appoints; and among this twenty-three will be found nearly all the most important appointed administrative agencies of the state government. This requirement practically amounts to a division of responsibility between the governor and the senate, in the matter of appointment; and hence to an opportunity for both to disclaim responsibility. The governor might, for example,

⁷²R. L. Okla. 1910, Sec. 3937.

⁷³S. L. Okla. 1915, Ch. 109.

⁷⁴S. L. Okla. 1913, Ch. 22.

be held directly responsible for the highway policy of the state, for the manner in which industrial disputes are settled and for the financial policy in regard to constructing new buildings, buying supplies, and equipping state institutions, if he, and he alone, were responsible for the selection of the highway commissioner⁷⁵, the members of the state industrial commission,⁷⁶ and the members of the board of affairs⁷⁷. But as they are now selected the public is at a loss to know whether the governor or senate has been responsible for the choice of any particular men for these places. Other important boards in the selection of the incumbents of which the senate participates are: The board of agriculture⁷⁸, the banking board, election board, the game and fish commission⁷⁹, the board of arbitration and conciliation,⁸⁰ the board of education⁸¹ and others. Since it has so happened that the majority of the senate and the governor have, in Oklahoma, been of the same political party every year since statehood, this limitation requiring senatorial advice and consent to gubernatorial appointments has not been so much of a handicap as it might otherwise have been. But even in view of this fact it is undoubtedly true that in many cases the chief executive has chosen officers who he knew would be acceptable to the senate instead of those whom he considered best qualified for the positions.

The governor serves with two members appointed by him, and who hold office at his pleasure, on the boards

⁷⁵S. L. Okla. 1915, Ch. 173.

⁷⁶S. L. Okla. 1919, Ch. 14.

⁷⁷R. L. Okla. 1910, Sec. 8079.

⁷⁸S. L. Okla. 1915, Ch. 109.

⁷⁹R. L. Okla. 1910, Sec. 3293.

⁸⁰R. L. Okla. 1910, Sec. 3705.

⁸¹S. L. Okla. 1910-11, Ch. 47.

of regents of the University Preparatory School⁸² and of the Oklahoma Military Academy⁸³. He also serves on the board of regents of the School of Mines at Wilburton⁸⁴. The superintendent of public instruction is an ex officio member of this board, however; so, although the governor appoints three other members who serve at his pleasure, he cannot be held entirely responsible for its work. He serves, too, on the Americanization commission⁸⁵, the other members of which he appoints at will. While membership in these boards places the governor in a position where he may definitely have a part in their work, it is probable that a better plan would be to have him appoint all members. Under this arrangement he would be in a position to demand efficient work from the boards but would not at the same time be burdened with their detailed work.

The governor appoints persons to fill vacancies in elective state offices and in the office of county commissioner, in addition to other powers of appointment granted him⁸⁶.

POWER OF REMOVAL

No constitutional provision is made as to the removal of appointive officers, and the methods of removal provided for in the statutes creating such offices are considerably varied. A general law provides that the governor may remove any officers appointed by him, in case of incompetency, neglect of duty, or malfeasance in office⁸⁷. Another law, which refers to all officers, provides that

⁸²S. L. Okla. 1919, Ch. 118.

⁸³S. L. Okla. 1919, Ch. 151.

⁸⁴S. L. Okla. 1919, Ch. 178.

⁸⁵S. L. Okla. 1919, Ch. 315.

⁸⁶R. L. Okla. 1910, Sec. 4278.

⁸⁷R. L. Okla. 1910, Sec. 8052.

“every office shall become vacant on the happening of either of the following events before the expiration of the term of such office.” The events named are, death or resignation of the incumbent, removal from office or failure to qualify, when a judgment is obtained against the incumbent on his official bond, ceasing to be a resident of the district for which he was elected or appointed, conviction of any infamous crime or any offense involving breach of his official oath. The fact by virtue of which a vacancy occurs is determined by the authority empowered to fill the vacancy⁸⁸. It would seem, however, that this law could not, under the constitution, apply to officers, subject to impeachment, for an exclusive method is provided for their removal⁸⁹.

A number of officers are appointed to serve “during the pleasure of the governor⁹⁰”, or to hold office “at the will of the governor⁹¹”. Members of the board of public affairs may be removed whenever in the opinion of the governor “the public interests may be thereby subserved⁹²”. When provisions such as these govern the executive’s power of appointment, he may remove his appointees at any time. The Oklahoma courts have held in several decisions that an executive officer may exercise the

⁸⁸R. L. Okla. 1910, Sec. 4276.

⁸⁹See above.

⁹⁰Game and Fish Commission, R. L. Okla. 1910, Sec. 3293; Secretary of Board of Vocational Education, S. L. Okla. 1917, Ch. 155; Commissioner of Highways, S. L. Okla. 1915, Ch. 173; Pardon and Parole Attorney, S. L. Okla. 1919, Ch. 66; Fraternal Insurance Board, Ibid, Ch. 67.

⁹¹Board of Control of Military Training, S. L. Okla. 1917, Ch. 246; Board of Regents of University Preparatory School, S. L. Okla. 1919, Ch. 118; Board of Regents of Oklahoma Military Academy, Ibid, Ch. 151.

⁹²R. L. Okla. 1910, Sec. 8079.

power of removal unless expressly prohibited, for the appointive power carries with it the inherent power of removal, unless prohibited by law⁹³.

A few of the statutes which create new appointive offices make no provision either as to the length of term or the power of removal⁹⁴. In such case, too, the appointee holds at the pleasure of the appointing power⁹⁵. Still other statutes declare definitely that the officers appointed thereunder may be removed at any time by the appointing power⁹⁶. In this situation there can be no question but that the governor may remove his appointees whenever in his judgment he deems it best to do so.

Officers who serve under provisions of the nature above discussed may be removed without notification or a hearing. The mere appointment of a successor removes the acting officer⁹⁷. But where, as in the case of most appointive offices in Oklahoma, the officer is appointed for a definite term, this fixation of term constitutes an inhibition on the freedom of the executive in exercising the removal power. The fixation of term does away with the inherent quality of the governor's right of removal. A law⁹⁸ giving him the power of removal in all cases, under certain circumstances, has, however, provided him with a method of removing officers with fixed terms before the end of their terms. Even under this provision they cannot be re-

⁹³Cameron v. Parker, 2 Okla. 277, 38 Pac. 14; Ardmore v. Sayre, 54 Okla. 779, 154 Pac. 356.

⁹⁴Board of Commissioners for the promotion of Uniform State Laws, S. L. 1917, Ch. 115; State Cemetery Board, S. L. Okla. 1919, Ch. 153.

⁹⁵Childs v. State, 4 Okla. Cr. 474, 113 Pac. 545.

⁹⁶Game Warden, R. L. Okla. 1910, Sec. 3304; Fire Marshal, S. L. Okla. 1910-11, Ch. 46.

⁹⁷Touart v. State, 56 So. 211.

⁹⁸R. L. Okla. 1910, Sec. 8052.

moved summarily. The officer must have notice and hearing, and the existence of a cause for removal must be determined after notice to the officer and after he has had an opportunity to be heard⁹⁹.

The statutes providing for appointment by the governor of the bank commissioner¹⁰⁰, the members of the board of education¹⁰¹, the secretary of the insurance board¹⁰², and others, state that these officers cannot be removed except for cause, and in several instances specify what shall constitute cause for removal¹⁰³. The rule that notice and a hearing must be given before an appointive officer with a fixed term can be removed applies with even more force to those officers concerning whom it is definitely stated that they may be removed only for cause.¹⁰⁴ And when the causes are definitely stated an officer may not be removed for any other reasons.¹⁰⁵ Even though a hearing is necessary, however, the governor is the exclusive judge, so far as the courts are concerned, of the sufficiency of the proof of the charges, and his findings are not reviewable by any court.¹⁰⁶ The granting to the governor of the power to remove for cause and then allowing him to be the sole judge of the sufficiency of the cause does not deny due process of law to the removed official. The officer has no right of property in the office and a hear-

⁹⁹Porter v. Murphy, 104 S. W. 658 (Indian Territory Case.)

¹⁰⁰S. L. Okla. 1913, Ch. 22.

¹⁰¹S. L. Okla. 1910-11, Ch. 47.

¹⁰²S. L. Okla. 1915, Ch. 174.

¹⁰³Members of the Board of Embalming, according to R. L. Okla. 1910, Sec. 6855, may be removed for neglect of duty, incompetency, or improper conduct; members of the State Industrial Commission, according to S. L. Okla. 1919, Ch. 14, may be removed for inefficiency, neglect of duty, or misconduct while in office.

¹⁰⁴Touart v. State, 56 So. 211.

¹⁰⁵Dullam v. Willson, 53 Mich. 392; 51 Am. Rep. 128.

¹⁰⁶Cameron v. Parker, 2 Okla. 277, 38 Pac. 14.

ing before the court previous to his removal is not necessary to make that removal valid, if the power of removal is rested by statute in an executive official.¹⁰⁷

In one case a statute providing for an appointive officer makes it necessary to have a public hearing before such officer may be removed. This applies to the state industrial commission, a member of which may be removed only after a copy of the charges against him has been presented to him, and a public hearing has been granted him upon at least ten days' notice.¹⁰⁸ In regard to a single board, the state banking board, and a single officer, the bank commissioner, the persons directly affected by the work of the officer have a voice in his removal. Two-thirds of the members of the state bankers' association "shall have the authority to make recommendations to the governor in exercising the power of removal, and due consideration shall be given by the governor to the recommendation in ascertaining the grounds for removal of the bank commissioner and the members of the banking board."^{108a}

The governor's general powers in regard to removal, then, are fairly broad. Appointive officers without definite terms may be summarily removed unless express provision is made otherwise, and such officers with fixed terms may be removed, after notice and a hearing, for incompetency, neglect of duty, or malfeasance in office. Most of the laws which provide for appointive officers contain provisions concerning their removal. These provisions are not uniform, but in most cases the rules just stated apply. Although the governor's powers in regard to the removal of appointive officers are broad, he has no power of removing elective state officers.

¹⁰⁷ Ibid.

¹⁰⁸ S. L. Okla. 1919, Ch. 14, Sec. 15.

^{108a} S. L. Okla. 1913, Ch. 22.

OTHER CONTROL OVER STATE OFFICIALS.

The terms of office of practically all the appointive administrative officials are determined by the legislature. Here again, in a number of cases, the governor may be prevented because of legislative action from appointing those whom he considers best qualified for the position. The members of thirteen boards and commissions serve for terms longer than that of the governor, and on all of these agencies part of the members retire at one time and part at another, thus making it impossible for the governor ever to be responsible for the entire personnel of the board or commission. The board of education, the board of agriculture, and the state industrial commission are the most important agencies the selection of which is so limited. The members of four boards of regents of state educational institutions and of three examining and licensing boards also hold office longer than does the governor who appoints them.¹⁰⁹

The salaries and duties of administrative officials are both fixed by the legislature rather than by the administrative head. The governor is not given any authority to hire a cheaper man than the legislature thought necessary for one position and divert the surplus from that office to a needed increase in the salary of an expert employed in some other department, or otherwise to exercise his discretion in spending money for administrative affairs.

¹⁰⁹Board of Regents of the University of Oklahoma, S. L. Okla. 1919, Ch. 293; Board of Regents of the Oklahoma College for Women, S. L. Okla. 1919, Ch. 295; Board of Regents of Miami School of Mines, S. L. Okla. 1919, Ch. 302; Board of Regents of the Colored Agricultural and Normal University, S. L. Okla. 1919, Ch. 303; Board of Veterinary Medical Examiners, Board of Dental Examiners, S. L. Okla. 1919, Ch. 41; Board of Pharmacy, S. L. Okla. 1919, Ch. 76.

Although many officers and boards are appointive, there is still a large group of administrative agencies composed of state officers acting in an ex officio capacity. The governor serves on the more important of these boards, but has no more influence over the work they accomplish than does any other member of a particular board. The board of equalization,¹¹⁰ the chief duties of which are to assess public utilities and to adjust tax levies as between counties, is composed of the governor, the secretary of state, the auditor, the examiner and inspector, the treasurer, the attorney-general, and the president of the board of agriculture. The commissioners of the land office¹¹¹ are responsible for a very important part of the work of the state, that of administering affairs connected with the leasing, renting, and selling of state school lands and other public lands, and also of managing the state educational endowment and the farm loan funds. The governor, the superintendent of public instruction, the auditor, the president of the board of agriculture, and the secretary of state comprise this commission. The governor serves with the president of the university of Oklahoma and the superintendent of public instruction on the geological commission¹¹²; with the president of the board of agriculture and the director of the extension division of the agricultural and mechanical college on the market commission,¹¹³ and with the same officers on the advisory board to the state farm and industrial council.¹¹⁴ By virtue of his membership on these ex officio boards, some of which exercise important functions, his power might seem to be en-

¹¹⁰Const., Art. X, Sec. 21.

¹¹¹Const., Art. VI, Sec. 32.

¹¹²R. L. Okla. 1910, Sec. 8125.

¹¹³S. L. Okla. 1919, Ch. 280.

¹¹⁴S. L. Okla. 1919, Ch. 91.

larged in some degree. Since the other members of these boards, however, are officers over whom he has no control and who are in no way responsible to him for their work as members of the board, he cannot be held responsible for the effectiveness or ineffectiveness of the work carried on.

In addition to these ex officio boards on which the governor serves, there are several others which perform administrative functions, but over which he has no influence, either by membership thereon or by selection of the personnel thereof. The warehouse commission¹¹⁵, for example, is composed of the president of the board of agriculture, the state bank commissioner, and the state insurance commissioner; the attorney general acts as bond commissioner; and three professors of the agricultural and mechanical college constitute the livestock registry board of inspection. The superintendent of public instruction, the president of the board of agriculture, and the state auditor are ex officio members of the board of pardons which the laws of 1910¹¹⁶ provide for, and which, so far as the statutes are concerned, is still in existence, but which in actual fact has been rendered powerless by a decision of the court to the effect that the entire pardoning power rests with the governor.¹¹⁷ The administrative work carried on by these boards over which the chief executive has no control is not sufficiently important to greatly handicap him, but could be carried on just as effectively if incorporated in a unified system.

Resignations of state officers, of members of the legislature when that body is not in session, of officers of districts of the state, and of county commissioners, are

¹¹⁵S. L. Okla. 1919, Ch. 270.

¹¹⁶R. L. Okla. 1910, Sec. 4627.

¹¹⁷Ex parte Ridley, 3 Okla. Cr. 350, 106 Pac. 549.

made to the governor. (^{117a}) Vacancies in state offices, in newly organized counties where no election has been held, and in all boards of county commissioners are filled by appointment by the governor.¹¹⁸

In summary, then, the governor's authority in regard to state administration as carried on by state officials is limited very greatly by the fact that the business of conducting a large part of such affairs is placed in the hands of elective officers over whom he has almost no control, and by the fact that his power in regard to the agencies which he appoints is cut short in almost every particular by legislative enactment. If he is to be in a position where he may be held responsible, his control over administrative agencies must be less hampered by legislative restriction.

POWER OVER LOCAL ADMINISTRATION.

In regard to local administration the governor's powers are not extensive. He may direct the attorney general¹¹⁹ to investigate cases of misconduct of all county, city, and municipal officers, as well as of all state officers not subject to impeachment.¹²⁰ Municipal charters must be submitted to him after being voted on by the people, for his approval.¹²¹ He shall approve any charter submitted to him "if it shall not be in conflict with the Constitution and laws of this State." The governor must also approve all amendments to municipal charters. The question of just what power this places in his hands is discussed in the chapter on administrative control over cities.

The governor, also, performs certain ministerial du-

¹¹⁷aR. L. Okla. 1910, Sec. 4277.

¹¹⁸R. L. Okla. 1910, Sec. 4278.

¹¹⁹S. L. Okla. 1917, Ch. 205.

¹²⁰See Ch. XXII for further discussion of this matter.

¹²¹Const., Art. XVIII, Sec. 3.

ties¹²² in connection with the removal of county seats and the formation of new counties.¹²³

These few provisions comprise the governor's power over local administration. Only one of them, the attorney general's law, gives him any real administrative power.

SPECIAL POWERS AND DUTIES.

The governor's constitutional power to preserve internal peace and safety is to be found in two provisions: first, that he shall be "Commander-in-Chief of the Militia of the State * * * and may call out the same to execute the laws, protect the public health, suppress insurrection, and repel invasion,"¹²⁴ and second, that "he shall be a conservator of the peace throughout the State."¹²⁵

The constitution gives to the legislature the duty of providing for organizing, disciplining, arming, maintaining, and equipping the militia.¹²⁶ This body has seen fit, however, to provide that the governor shall have large powers in this matter, such powers, indeed, as give him full control of the military forces, subject to certain basic provisions of the legislature. The laws provide that he shall have supreme command of the military forces of the state while in the service of the state, subject to the laws of the United States. He authorizes the formation of new units of the militia.¹²⁷

The governor exercises his power as commander-in-chief through the adjutant general, whom he appoints and who serves at his pleasure.¹²⁸ This officer acts as

¹²²Const., Art. XVII, Sec. 6, S. L. Ok. 1910-11, Ch. 40.

¹²³See Ch. XIX, for a discussion of these powers.

¹²⁴Const., Art. VI, Sec. 6.

¹²⁵Const., Art. VI, Sec. 8.

¹²⁶Const., Art. V, Sec. 40.

¹²⁷S. L. Okla. 1917, Chs. 193 and 194.

military advisor to the governor and supervises the national guard under his direction.¹²⁸ The governor may also appoint an honorary staff, to consist of such honorary aides as he may desire to commission.¹³⁰

The governor is authorized and required to order on duty the national guard or any necessary part thereof "in case of war, invasion, insurrection or breach of the peace or imminent danger thereof, or any forcible obstructing of the execution of the laws, or reasonable apprehension thereof, and at all times he may deem necessary." The civil authorities, district or county judge, county sheriff or city mayor, may call upon the commander-in-chief for aid in dealing with any situation involving breach of the peace, tumult, riot or resistance to the process of the state or imminent danger thereof, or in any case of public disaster or calamity. The commander-in-chief may order military aid to any such municipality if in his judgment the situation seems to demand it. The commanding officer of any militia detailed to such location is required to report to the civil officials asking for aid and coöperate with and be subject to the civil authorities while on duty there, although he is permitted a certain discretion as to methods.¹³² It is the duty of such commanding officer to render all assistance in his power to preserve the peace and execute the laws of the state.¹³³

The powers of the governor when the militia has been called out and is in action in a particular locality are limited to a considerable extent by the provisions of the

¹²⁸Ibid.

¹²⁹Ibid.

¹³⁰Ibid.

¹³¹R. L. Okla. 1910, Sec. 3904.

¹³²Ela v. Smith, 5 Gray 121: 66 Am. Dec. 356; State v. Coit, 8 Ohio. S. & C. P. Dec. 62.

¹³³R. L. Okla. 1910, Sec. 3908.

constitution that "the privilege of the writ of habeas corpus shall never be suspended,"¹³⁴ and "the military shall be held in strict subordination to the civil authorities."¹³⁵ In the case of *Fluke et al. v. Canton*¹³⁶ the court subscribed to a statement in a Kentucky case¹³⁷ in which provisions similar to those in the Oklahoma Constitution were construed. "We are not willing to concede that in any exigency that may arise the military is superior to the civil authorities. . . . Nor do we believe that the time will ever come when the military forces of the state, acting under and in obedience to the civil laws of the state, will not be able to control under the authority conferred by these laws any situation that may present itself." The court stated further in the *Fluke* case, that "When the convention was in session for the purpose of framing a constitution for the proposed state of Oklahoma, the holding of the Supreme Court of the state of Colorado, *In re Moyer, supra*,"¹³⁸ (to the effect that in certain emergencies the civil law may be suspended by military orders) "was fresh in their minds. In view of that holding, Section 10 of Article 2 (Bill of Rights) of the Constitution, which provides that 'the privilege of the writ of habeas corpus shall never be suspended by the authorities of this state,' was incorporated in said constitution evidencing a settled purpose as expressed in Section 14, Article 2, *supra*, that 'the military shall be held in strict subordination to the civil authorities.' " From this statement it seems obvious that the Oklahoma courts depart from the general rule,¹³⁹ that the power to order out military forces implies the right to suspend the writ of

¹³⁴Const., Art. II, Sec. 10.

¹³⁵Const., Art. II, Sec. 14.

¹³⁶31 Okla. 718, 123 Pac. 1049.

¹³⁷*Franks v. Smith*, 142 Ky. 232, 134 S. W. 484.

¹³⁸35 Colo. 159, 85 Pac. 190.

¹³⁹See 45 L. R. A. 832, Note.

habeas corpus, and agree with the Kentucky case just cited that the writ may never be suspended.

The governor may under certain conditions call out the militia without request from any civil officer, and without placing them under the orders of the civil authorities in the territory into which they are sent.¹⁴⁰ In the case of *In re Boyle*¹⁴¹, the court decided that it was the governor's duty to act without an application from the civil authorities when it appeared that for any reason these officers were not doing their duty. The governor acts in this case in his capacity as chief executive and in the exercise of his duty of seeing that the laws of the state are faithfully executed, and not as commander-in-chief of the militia; hence the sending in of troops without the request of the civil authorities of the locality does not constitute a subordination of the civil to the military power. The military power in such a case is subordinate to the civil power in every emergency that arises during active service. Those who exercise military power in suppressing an insurrection still remain liable for any abuse of their authority.¹⁴²

From the discussion of the military powers of the governor, then, it will be seen that so far as the constitution allows the military power to extend the governor has supreme command of it. The extent of his power, however, is greatly limited, as compared with that possessed by the chief executives in other states, by constitutional provision. The governor may not suspend the writ of habeas corpus in any case; he may send sufficient armed forces into a territory to quell a riot and insure the proper execution of the laws, but the military forces can exercise no powers beyond those of ordinary

¹⁴⁰*Franks v. Smith*, 142 Ky. 232, 134 S. W. 484.

¹⁴¹6 Idaho 609, 57 Pac. 706.

¹⁴²See 45 L. R. A. (ns) 1014-1020, and *Fluke v. Canton*, 31 Okla.

peace officers; he may send forces to aid civil authorities, upon their request, and then the military power must act under the orders of the civil authorities, and is at all times amenable to civil process for unauthorized or illegal conduct.

SPECIAL POWERS IN ARRESTING CRIMINALS

The governor is authorized to offer, in his discretion, a reward not exceeding one thousand dollars for the arrest and conviction of any person who commits or attempts to commit a felony. This reward may be paid to any agency making the arrest in case conviction is secured, and in case a person forcibly resists arrest and is killed because of such resistance, the reward may be paid in the discretion of the governor the same as if conviction had been secured.¹⁴³

THE GOVERNOR'S PARDONING POWER

The constitution places the pardoning power in the governor.¹⁴⁴ He has power to "grant, after conviction, reprieves, commutations, paroles, and pardons for all offenses, except cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper, subject to such regulations as may be prescribed by law." The constitution also provides that he shall communicate to the legislature, at each regular session, certain information concerning each pardon he grants.

The legislature of 1907 made provision for a board of pardons, whose recommendations should be binding upon the governor.¹⁴⁵ In the case of *Ex parte Rid-*

¹⁴³S. L. Okla. 1915, Ch. 13.

¹⁴⁴Const., Art. VI, Sec. 10.

¹⁴⁵Laws 1907-08, Ch. 62. R. L. Okla. 1910, Secs. 4627 to 4638. 718, 123 Pac. 1049.

ley,¹⁴⁶ the court held that "the legislative act creating the board of pardons is clearly unconstitutional and void." The argument for this decision was that by means of the act the legislature attempted to confer pardoning power upon other state officers, the doing of which was an unconstitutional interference with and infringement upon the executive power. The court interpreted the constitutional provision to the effect that the governor may grant pardons upon such conditions and with such restrictions and limitations as he may deem proper, *subject to such regulations as may be prescribed by law*, to mean that the legislature might only provide regulations relative to the manner of applying for pardons. Hence the portions of the 1908 act which refer to a board of pardons are invalid. The 1919 legislature provided for a bureau of pardons and paroles to assist the governor in exercising his power of granting clemency to convicted persons. At the head of this bureau is the pardon and parole attorney, who is appointed by the governor and holds office at his pleasure.¹⁴⁷ The purpose of this bureau is to investigate applications for pardons, and supply information to the governor, but it does not act as a recommendatory body.

It has been held in other states under provisions similar to those in the Oklahoma constitution that a statutory provision empowering the supreme court to stay execution of death sentence pending appeal is not an interference with the right of pardon and parole vested in the executive department.¹⁴⁸ A law giving to prisoners certain deductions from their term of imprisonment for good behavior is not unconstitutional as an infringement upon the prerogative of the governor to pardon.

¹⁴⁶3 Okla. Cr. 350, 106 Pac. 549.

¹⁴⁷S. L. Okla. 1919, Ch. 66.

¹⁴⁸Parker v. State, 135 Indiana 534, 35 N. E. 179, 23 L. R. A. 859.

It does not restrict or interfere with this power in any way, but simply fixes the term of imprisonment in certain cases and on certain conditions, and thus enters into and becomes a part of the judgment and sentence of the court.¹⁴⁹

As to the court's power in pardoning, it has been held again that the pardoning power rests solely and exclusively in the governor. County judges, county attorneys, and sheriffs, have no power to pardon or parole persons convicted of crime in the courts of the state. Where a defendant sentenced to six months imprisonment in the county jail is released at the expiration of one month, without authority of law, by order of the county court, the time of his absence cannot be considered as spent in jail in satisfaction of the sentence.¹⁵⁰

The governor, although the constitution empowers him to grant "after conviction, reprieves, commutations, paroles, and pardons for all offenses except in cases of impeachment," can not go further in his pardoning power than to remit the penalty imposed. A pardon granted by the governor, therefore, will not release the convict from the liability to pay the costs, because the rights to such costs are vested rights which cannot be disturbed or abridged or lessened by any pardon the governor may grant.¹⁵¹

In the case of *Henry v. State*¹⁵² the court discussed at some length the extent of the power of the governor to exercise his own discretion in granting pardons. The court held that he could not exercise this power either directly or indirectly as a means of legislation, for the provision making the three departments separate

¹⁴⁹Ex parte Ridley, 3 Okla. Cr. 350, 106 Pac. 549.

¹⁵⁰Ex parte McClure, 6 Okla. Cr. 241, 118 Pac. 591.

¹⁵¹Terrell v. State, 11 Okla. Cr. 529, 148 Pac. 822.

¹⁵²10 Okla. Cr. 369, 136 Pac. 982.

and equal is as much a part of the fundamental law as the provision investing the governor with the pardoning power. The point under discussion was as to whether or not the governor could constitutionally pardon all offenders sentenced with capital punishment, because of conscientious scruples against such punishment. It was argued that the setting aside of all death penalties was in the nature of legislation. In so setting aside all death penalties, too, the governor not only goes outside his sphere of action in that he encroaches on the domain of another and equal department of the government, but in that he violates his constitutional oath to obey the constitution of the state. The court, in continuing its argument, remarked that allowing the governor unlimited discretion in exercising the pardoning power concedes him the right to suspend the execution of any provision of law of which he may not approve. Bishop's new criminal law¹⁵³ is quoted to the effect that the governor is not justified in exercising the pardoning power in pursuance of his own private views, but that he should act upon public considerations. "The granting of pardons (commutations or paroles) is discretionary in its nature; therefore it is necessarily the more open to control by the impeaching power." The court, then, warns the governor that his action in pardoning all persons convicted of murder and sentenced to capital punishment is an impeachable offense, but does not offer any suggestion as to what legal remedy might lie in case the governor violated his authority under the pardoning power, as the court construed such power.

The governor may use his discretion as to the degree of clemency he is to exercise in any given instance. An unconditional pardon reaches both the punishment prescribed for the offense and the guilt of the offender; it

¹⁵³Vol. I, pp. 117, 178-181, 559, 561.

obliterates in legal contemplation the offense itself, and hence its effect is to make the offender a new man.¹⁵⁴ The governor may, however, grant a parole or conditional pardon. The conditions may be any that are capable of performance and are neither illegal nor immoral.¹⁵⁵ The terms and conditions of the parole must be accepted by the party convicted, however, before they can be made binding upon him.¹⁵⁶ A parole simply suspends sentence during the liberty thus granted. Upon a violation by a convict of the terms and conditions of his parole, the governor has power to revoke such parole and direct that the convict be rearrested and returned to custody. Section 5970 of the Revised Laws of 1910 gives the governor power to grant a reprieve or to suspend the execution of a death sentence while a writ of error is pending. In interpreting this statute the courts have held that the governor may grant a reprieve to a person sentenced to death pending the perfecting of an appeal in the case.¹⁵⁷ The governor may restore to citizenship any person convicted of any offense committed against the laws of the state, upon cause being shown, either after the expiration of any sentence or after pardon.¹⁵⁸

In the absence of the governor from the state, or because of any other disability on his part to perform the duties of his office, the lieutenant governor becomes acting governor and may exercise any of the functions of the governor. A pardon granted by the lieutenant governor in the absence of the governor from the state is a valid and effectual pardon, and the governor's

¹⁵⁴Ex parte Crump, 10 Okla. Cr. 133, 135 Pac. 428.

¹⁵⁵Ex parte Horine, 11 Okla. Cr. 517, 148 Pac. 825.

¹⁵⁶Ex parte Taggart, 12 Okla. Cr. 439, 158 Pac. 288; Ex parte Hawkins, 10 Okla. Cr. 396, 136 Pac. 991.

¹⁵⁷Opinion of the Judges, 3 Okla. Cr. 315, 105 Pac. 684.

¹⁵⁸R. L. Ok'a. 1910, Sec. 4639.

order, issued later, purporting to revoke such pardon is a nullity, for a pardon, when delivered, is irrevocable.¹⁵⁹ But a parole which may have been granted by the lieutenant governor prior to the governor's return to the state, but which was not delivered to and accepted by the paroled convict until after the governor had arrived within the borders of the state is not a valid pardon, and may be revoked by the governor.¹⁶⁰

The judge of a court at which a conviction requiring the judgment of death is had, must, immediately after the conviction, transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.¹⁶¹ A section giving the governor power to require the opinion of any of the judges of the criminal court of appeals upon the statement thus furnished was held to be unconstitutional, as an unwarrantable encroachment by the legislature upon the judiciary, in that it placed non-judicial duties on that department of government.¹⁶²

The provisions governing pardons which are in effect at present, then, consist of the section of the constitution conferring the pardoning power on the governor and of a few legislative acts concerning the exercise of this power. The governor's pardoning power is exclusive. The exercise of his discretion in this matter cannot be regulated by the legislature except as that body may prescribe rules concerning applications for pardons, or may impeach the executive for abuse of his power. The courts

¹⁵⁹Ex parte Crump, 10 Okla. Cr. 133, 135 Pac. 428; Stewart v. State, 11 Okla. Cr. 400, 146 Pac. 921; Ex parte Cullens, 11 Okla. Cr. 644, 150 Pac. 90.

¹⁶⁰Ex parte Hawkins, 10 Okla. Cr. 396, 136 Pac. 991.

¹⁶¹R. L. Okla. 1910, Sec. 5968.

¹⁶²R. L. Okla. 1910, Sec. 5969; In re Opinion of the Judges, 25 Okla. 76, 105 Pac. 325.

cannot inquire into his reasons for pardoning particular individuals, and cannot regulate his judgment in acting as to any specific class of cases. Abuse of his discretionary power is only punishable by impeachment.

GOVERNOR'S POWER OF CONDUCTING INTERSTATE BUSINESS

"The Governor shall conduct in person or in such manner as may be prescribed by law, all intercourse and business of the State with other states and with the United States."¹⁶³ Under this provision of the constitution the legislature has required that no armed military force from another state, except such force be a part of the United States army, or acting under the authority of the United States, be permitted to enter this state without the permission of the governor.¹⁶⁴ Under this provision, too, the governor has been given authority to deliver up criminals to other states upon proper requisition being made, and to demand fugitives from justice from other states into which they have fled.¹⁶⁵ In the case of *Ex parte Owen*¹⁶⁶ the court held that no person can be surrendered by one state to another except according to the provisions of the Constitution and laws of the United States, for the power to surrender criminals as a matter of comity is not possessed by the states of the Union. Upon the executive authority of a state rests the duty of determining whether or not a demand for the return of a fugitive from justice is made in compliance with law, and whether or not the

¹⁶³Const., Art. VI, Sec. 8.

¹⁶⁴R. L. Okla. 1910, Sec. 3900.

¹⁶⁵R. L. Okla. 1910, Sec. 6081 to 6094.

¹⁶⁶10 Okla. Cr. 284, 136 Pac. 197.

person whose return is sought is a fugitive from justice; but his decision on these points is reviewable by the courts in habeas corpus proceedings. The laws of Oklahoma concerning extradition are framed to include what the laws of the United States and the decisions of the federal courts require in order that extradition proceedings shall be legal.¹⁶⁷ The laws of the United States on this subject, however, read that "it shall be the duty" of the executive to deliver up fugitives, while the Oklahoma laws state that the person charged "must----- be delivered up by the governor of this state." Some question has arisen as to whether or not state laws can make any further requirements of any kind other than those made by an act of Congress.¹⁶⁸ In any event, the extent to which the legislature of Oklahoma can control the governor's discretion in this matter is somewhat doubtful, as the state constitution places the sole power of conducting interstate affairs in the hands of the governor. The governor may formally demand the extradition of criminals who have fled from this state to other states.¹⁶⁹

MISCELLANEOUS.

The constitution requires that "the governor shall commission all officers not otherwise commissioned by law." Such commissions shall be signed by the governor and attested by the secretary of state.¹⁷⁰ In determining who is entitled to the records and papers of an office,

¹⁶⁷Compare R. L. Okla. 1910, Secs. 6081 to 6094 with quotations from federal laws and cases in 10 Okla. Cr. 284, 136 Pac. 197.

¹⁶⁸See 28 L. R. A. 802. note.

¹⁶⁹See *Ex parte Owen*, 10 Okla. Cr. 284, 136 Pac. 197.

¹⁷⁰Const., Art. VI, Sec. 13.

in a mandamus proceeding, the court will not go behind the governor's commission.¹⁷¹

Upon the governor is placed the duty of appointing and commissioning in each county such notaries public as may be required.¹⁷² As these officers are not administrative officers, placing the power of appointing them in the hands of the governor does not enhance his control over state administration.

Whenever a vacancy shall occur in the office of senator from Oklahoma in the Congress of the United States, the governor shall appoint a person to fill the office until "the first primary and general election in the state occurring thereafter."¹⁷³

The governor must keep a permanent record of all his official executive acts and a separate permanent record of all his military acts.¹⁷⁴

Summarizing the authority, then, which is vested in the governor by virtue of the special powers and duties placed upon him, it may be said that there are several which add greatly to the importance of the position, but do not give him any large powers of exercising energetic and constructive control as chief executive.

CRITICISMS AND RECOMMENDATIONS.

From our study of the position of the chief executive so far we have seen that he is concerned with the following functions: the making of law, the planning of the budget, certain control over state and local administration, the power of pardon and parole, the carrying on of

¹⁷¹Ewing v. Turner, 2 Okla. 94. 35 Pac. 951.

¹⁷²R. L. Okla., 1910, Sec. 4240.

¹⁷³S. L. Okla. 1915, Ch. 49.

¹⁷⁴R. L. Okla. 1910, Secs. 8053-4.

interstate business, the duty of acting as commander-in-chief of the militia, and a few others.

THE PLACE OF THE EXECUTIVE IN LAW MAKING.

We have seen that the governor has certain constitutional and legal methods of influencing legislation. These are, sending messages to the legislature, calling special sessions at which only those measures specified by him may be considered, and the veto power. He also may influence legislation indirectly through his leadership of his party, his power of appointment, and his ability to attract publicity to his program.

All these powers, however, are not sufficient to make him really responsible for the initiation and carrying through of public policy. While the people look to him as the one to express their wishes and while he bases his campaign upon large questions of public policy, he can only in a weak and feeble way help toward making these policies become law. The legislature may ignore, change, or vote against them, without a chance on his part of testing whether the people were really in earnest in electing him or whether they prefer other policies advocated by the legislature. Manifestly, unless the governor can definitely introduce measures into the legislature, fight for them within that body, and appeal to the people in case the legislature ignores them or votes against them, he can in no sense be held responsible to the people for what he stood for during his campaign.

The desirability of having the governor responsible for policies is obvious. In the first place, he alone is primarily responsible to the state as a whole rather than to a small district. In the second place, being intimately acquainted with the state through his position as chief executive,

he should know its needs better than anyone else. In the third place he is in a position to acquire wider and more accurate information than can be obtained by members of the legislature. And finally, he has a longer time for working out the details of policy and the relationship of one law to another than have members of the legislature. The lack of responsibility for policy planning at present results in confusion, uncoordinated, politically and economically unsound legislation, which is continually being changed and tampered with. Granted, then, that the governor should be given such responsibility, how is it to be accomplished?

Three main ways might be suggested. By constitutional provisions he might be continued as an officer elected by the people, but be given a seat on the floor of the legislature along with the other main executive officers with a right to be heard and to vote. He could also be given the power to initiate ordinary laws in the legislature as well as to initiate appropriations under the budget law. In case of a fundamental disagreement between the governor and legislature, some method should be provided by which a speedy resolving of such lack of harmony could be accomplished. This could be done by permitting the governor to resign after calling an election for a new governor, or else to call an election for members of the legislature. In case members opposed to his plans were re-elected, he would be forced to resign. If those in favor of his plans were elected, he could continue with his plans with a harmonious legislature back of him. Such a system would tend to make the governor really responsible for the planning of law as well as financial planning.

A second method which has been suggested is to have

the legislature appoint a manager, much as a city commission appoints such an officer. This manager would be responsible for both planning and carrying on administration under the control of the legislature. In such a system the executive is not a member of the legislature but only acts as its agent. He also is responsible not to the people but to the legislature alone. This plan is admirable for a city or county where large questions of policy do not arise, but would not be so desirable in a state where often, perhaps, efficient administration should be subordinated to public policy. Furthermore, such a plan does not provide enough responsibility to the people on behalf of the chief administrator. That is, no method is provided by which in case of an irreconcilable disagreement between the legislature and the executive, the will of the people may be ascertained.

The third method of securing responsibility would be to have a nominal governor elected who would represent the state officially, but have him appoint a chief executive officer from the legislature. This officer would be responsible for carrying out governmental administration and would in his turn appoint the heads of all the governmental departments from the membership of the legislature. He would initiate nearly all legislation, including the budget law, and would try to carry it through the legislature. In case of disagreement between the executive and the legislature, the executive could either resign or call a new election.

There are many advantages to such a plan. By having a nominal governor select a chief executive, many of the evils attendant upon the election of such an officer are done away with. The need of rewarding with administrative positions large numbers of politicians who helped in the campaign and the chance of electing a man to office

who has had little governmental experience and who may not be able to work harmoniously with the legislature are some of the evils which would be avoided. The nominal governor would almost be bound to select a man of proved ability from the leading party in the legislature for the chief administrative officer, for otherwise he would neither be able to form a cabinet, nor to get the legislature to agree to his plans. In the second place, since the real executive and his heads of departments would be members of the legislature, the legislature would not be jealous of their power and so would look to them as the real planning body. In the third place, the legislature would be able to exercise a significant control over them since it could ask questions, demand explanations regarding faulty administration and even by a vote remove them unless they could justify their actions before the people. Such an organization also obviates the objection to the manager plan for a state, since in case of final disagreement, the people themselves could determine what policy they approved. This plan would also tend to place policies definitely before the people. Since the executive would advocate policies and his ability to remain as the executive would be dependent upon carrying them through the legislature, public attention would be focused upon him. By such a plan questions of public policy would be discussed, rather than, as at present, almost nothing but personalities.

Either the first or the third of these methods should be adopted in order to secure the ablest and most responsible planning for legislation.

THE GOVERNORS POWERS AS TO THE BUDGET.

The governor is required by statute at the present time to prepare and present to the legislature a complete

budget bill. This bill may, however, be completely changed in the legislature by the increase or decrease of items, and may even be voted down in its entirety and a new bill substituted. One of the chief powers of the governor, however, should be that of preparing the financial plan for the state. And when he has prepared such a plan the extent to which the legislature might alter it should be limited. If the governor is to be held responsible for financial planning, increases and decreases should not be allowed, nor should new items be inserted, without the consent of the executive. In short, provision should be made so that the governor may be held absolutely responsible for the budget as passed or be forced to resign. A "show-down" should be provided for, by means of which the people could finally decide between the legislature's plan and the executive's plan in case the two could not agree. This could be made possible by either the first or the third scheme of organization suggested above.

CONTROL OVER ADMINISTRATION.

At the present time the governor is not an administrative chief. The duties of administration are distributed among numerous elective officers and appointive officers, boards, and commissions. Over the former the governor has almost no control, and over the latter his control is limited in nearly every instance by legislative restriction. This makes for a decentralization which is expensive, inefficient, and productive of discord. Duties are divided among these many officers with little respect to the relation of one agency to the other, and the governor is powerless to demand constructive and harmonious work. Yet the people look to him, as supreme executive, for an efficient administration. If the electorate is to be justified in expecting this of him, the power of appointing and remov-

ing department heads should be rested in him, and all the administration of the state should be brought within his supervision. This may be accomplished by reorganizing the state administration so that all the functions carried on by the state government are placed under a small number of departments. The heads of these departments should be appointed and removed by the governor. The duties of the numerous boards and commissions which now exist and perform their functions irrespective of the work of other agencies performing similar functions should all be placed under these few departments. The governor would then be relieved from serving on various boards and commissions, and no work would be carried on by ex officio boards over which he had no control. At the same time he would be responsible for all the administrative work because he had appointed and directed the department heads. As new functions developed they would be placed with one of the existing departments, rather than with a new administrative agency outside the control of the governor. Only in this way can administrative unity be secured.

The governor should be provided with an expert staff to assist him in checking up on administration and in making administrative plans.

The constitutional provisions in regard to administration should be very brief, only the fundamental plan of organization being prescribed. Opportunity would be left then, for the legislature to change and improve upon details. The chief executive should have considerable freedom of organization within the departments and should be allowed to exercise his own judgment in distributing administrative duties. These matters should be regulated only by administrative ordinances.

The administrative system, then, should be centralized, the governor should be given the power of appointing and removing department heads who would direct the performance of all administrative duties, an expert staff should aid the governor, and the details of organization within the administrative departments should be left to the executive. By means of these changes the governor would be given authority sufficient to make him the real executive of the state.

SPECIAL POWERS AND DUTIES.

The duties devolving upon the governor as pardon and parole officer should be given to some other agency. A pardon and parole board the sole duty of which was to investigate and act upon applications for pardons, could no doubt exercise this function in a much fairer manner than could the chief executive with his great task of directing administration. The placing of the pardoning power in the hands of other officers would also remove the governor from political influences brought to bear by persons seeking clemency.

The duty of appointing notaries public should also be placed elsewhere than with the governor. These places might well be filled by a civil service commission.

The several powers, such as those of acting as commander-in-chief of the militia, conducting interstate business, and filling vacancies in certain offices, which are now rested with the governor as supreme executive, should remain in his hands. Most of these are employed very infrequently and would not, therefore, interfere to any great extent with the governor's time; yet because they involve the exercise of discretion in important matters they should be prerogatives of the chief executive.

CHAPTER IV.

STATE ADMINISTRATION.

The executive and administrative functions of the state of Oklahoma are performed by thirteen elected officers for whom provision is made in the constitution, and by about sixty-five other officers, boards, commissions, or departments. The constitutional executive officers are the governor, the lieutenant governor, the secretary of state, the state auditor, the attorney general, the state treasurer, the state superintendent of public instruction, the state examiner and inspector, the chief mine inspector, the commissioner of labor, the commissioner of charities and corrections, the commissioner of insurance, and "other officers provided by law and this Constitution."¹ The president of the state board of agriculture is generally considered a constitutional officer, though the amendment passed by the legislature in 1913 and approved by the people in 1914 creates a board of agriculture of eleven members,² without specifying that one of these members shall be the president of the board. However, since the commissioners of the land office, who are named in the following clause of the constitution, include the president of the board of agriculture, it is commonly held that he is the thirteenth member of the group of constitutional officers.

The constitution and the laws lay down certain qualifications in regard to these officers. With the exception of the commissioner of charities and corrections, all must be of the male sex. A requirement of citizenship in the Unit-

¹Art. VI, Sec. 1 Const. of Okla.

²Art. VI, Sec. 31 Const. of Okla.

ed States is specified for all except the chief mine inspector, the commissioner of labor, the commissioner of charities and corrections, the commissioner of insurance, and the president of the state board of agriculture. In the majority of instances it is required by the constitution that these officers shall have been citizens of the state for a period of three years next preceding their election. An age qualification of twenty-five years is imposed upon the insurance commissioner and the commissioner of charities and corrections. No age is specified for the chief mine inspector, the commissioner of labor, and the president of the board of agriculture; though in the case of the last mentioned officer the requirement of the law that all members of this board shall have been engaged in practical farming for at least five years after reaching the age of twenty-one serves to establish an age qualification of twenty-six years. The other constitutional executive officers must have reached the age of thirty years in order to be eligible. Certain special qualifications for various offices will be mentioned when these offices are discussed.

All the above named officers are chosen at alternate general elections, for terms of four years synchronous with the term of the governor. The governor, the secretary of state, the state auditor and the state treasurer are not permitted to hold office for two consecutive terms.

We shall survey rapidly the most important duties of the executive officers whose functions are not considered elsewhere in this book. (See Index.) As the duties and powers of the governor and the lieutenant governor have been discussed in considerable detail in the preceding chapter, our survey will begin with the work of the secretary of state.

THE SECRETARY OF STATE.

The duties of the secretary of state are laid down both by the constitution and by statutes. The constitution provides that he shall keep a register of all the official acts of the governor, shall attest them, when necessary, and shall lay copies of them and of all papers relative thereto, before either house of the legislature when required to do so. He also preserves the constitution of the state.³ He is the custodian of the seal of the state and authenticates therewith all official acts of the governor except his approval of laws.⁴ He likewise attests all commissions signed by the governor, and files a list of all appointments made by the governor.⁵ The secretary of state also has important duties in connection with the state-wide initiative and referendum and with proposed amendments to the constitution. Petitions and orders for the initiative and referendum are filed with him.⁶ He refers constitutional amendments to the people.⁷

The oaths of office of various state officers are required to be filed with the secretary of state; such as the oath of each member of the corporation commission that he is not interested in any corporation over which the commission has jurisdiction, and that he will perform his duties as laid down by law.⁸ A special form of oath is given in the constitution, to which senators, representatives, and all judicial, state, and county officers are required to subscribe. This oath, when taken by state

³Const. Schedule, Sec. 43; Const. Art. VI, Sec. 17.

⁴Ibid, Sec. 18.

⁵R. L. 1910, Sec. 4280; Const. Art. VI, Sec. 13.

⁶Const. Art. V, Sec. 3.

⁷Art. XXIV, Sec. 1.

⁸Const. Art. IX, Sec. 17.

officers and judges of the supreme court, is filed in the office of the secretary of state.⁹

Copies of city charters which have been certified, authenticated and approved by the governor,¹⁰ and copies of amendments to such charters, must also be filed in this office.¹¹

In connection with business and corporations the secretary of state acts in several capacities. Articles of incorporation are filed with him and he records these and issues a certificate "that the articles containing the required statement of facts have been filed in his office."¹² Foreign corporations must file their articles of incorporation with him,¹³ and agents of foreign corporations must file authenticated copies of their appointments and commissions.¹⁴ In case a foreign corporation does not have an agent in the state upon whom process may be served, such process is served on the secretary of state.¹⁵

Numerous other duties in connection with the recording of documents, the certifying of documents, the filing of bonds, and so forth, are laid upon the secretary of state by law.

THE AUDITOR.

The auditor is the chief accounting officer of the state. All accounts or claims against the state must be presented to the auditor. He examines and adjusts these claims, and if they are found to be due from the state, he issues warrants upon the treasurer for payment. Before issuing

⁹Const. Art. XV, Sec. 2.

¹⁰Const, Art. XVIII, Sec. 3a.

¹¹Ibid, Sec. 4e.

¹²R. L. 1910, Secs. 1227, 1228.

¹³Ibid. 1335.

¹⁴Ibid, Sec. 1337.

¹⁵Ibid, Sec. 1339.

any warrant the auditor may require additional information, and for this purpose he may call before him and swear and examine claimants and other witnesses in reference to any claim or account presented to him.¹⁶ The auditor must report semi-annually to the governor, and is also required to submit a biennial report preceding each regular session of the legislature.¹⁷ The law lays down in detail the contents of this report. Examination shows that the information required is not particularly useful. Of what possible value to the legislature is a "statement of date, number and amount of each warrant, the person in whose favor, and on what appropriation or fund each warrant is drawn"? The legislature needs comprehensive and significant financial statements and summaries, rather than such meaningless details.

The statements required of the auditor in respect to the budget are much more worth while, since the law provides that he shall furnish certain information which might be of value in determining future public policy.¹⁸ By the budget law the auditor is required to present to the governor an itemized list of the needs of the legislature and of the judiciary for each of the ensuing fiscal years, to accompany such estimates with full and detailed explanation of all increases and decreases, and to supply other information designed to give the governor a basis for the preparation of the budget.¹⁹

Many of the usual functions given a state auditor are taken away from the Oklahoma auditor and are lodged in the state examiner and inspector. The auditor does not have the power to prescribe a uniform system of book-

¹⁶R. L. Okla. 1910. Sec. 8066.

¹⁷R. L. 1910. Sec. 8072.

¹⁸S. L. 1919. Ch. 142.

¹⁹Ibid.

keeping for the use of all treasurers, since that is done by the examiner and inspector.²⁰ The examination of the finances of public institutions is likewise in the hands of the examiner and inspector.²¹ The accounting procedure in respect to the budget is taken away from the auditor and lodged in the governor.²² The auditor of Oklahoma, then, instead of exercising the usual large centralized controlling functions, is little more than a checking officer to see that no money is paid out of the treasury except according to law.

Such a division of financial control leads to confusion and irresponsibility. Undoubtedly all such powers should be lodged in one officer.

While many of the usual functions belonging to an auditor are taken away from the auditor of this state, certain unusual functions are given to him by law. As a member of the state board of equalization, he helps to assess all public utilities operating within the state.²³ He also collects several important taxes, including the gross production tax,²⁴ the graduated income tax,²⁵ the graduated inheritance tax,²⁶ and the tax on transportation and transmission companies.²⁷ The vesting of such functions with the state auditor is highly illogical; since all special taxes should be collected by some one central department.

While the auditor does not have control over establishing accounts for the various public treasurers in the state

²⁰R. L. 1910, Sec. 8121.

²¹Ibid, Sec. 8120.

²²S. L. 1919, Ch. 142.

²³Const. Art. X, Sec. 21; R. L. 1910, Sec. 7373.

²⁴S. L. 1916, Ch. 39.

²⁵S. L. 1915, Ch. 164.

²⁶S. L. 1919, Ch. 296.

²⁷Bunn, Sec. 7549, W to Z 1.

he prepares such forms and instructions, in conformity with existing state laws, as are necessary to secure uniformity in "assessing, charging and collecting and accounting for the public revenue * * *" The assessors and treasurers must observe such forms and instructions.²⁸ This gives rise to the absurd situation that the examiner and inspector determines the accounting procedure of public treasurers, and yet the auditor prescribes forms in respect to all revenue.

The auditor has no general power to examine state institutions in order to determine whether or not they are conducted efficiently, or whether their appropriations from the state are being expended properly. His examination of their expenditures as shown by their warrants is merely a legal affair. However, in passing upon the question whether an expenditure is justified by the nature of the appropriation, he exercises a large degree of discretion. Thus, the auditor has held in certain instances that certain contingent accounts of the governor or other officers could not be used for the payment of traveling expenses outside of the state. The courts have laid stress upon the auditor's powers of discretion. "The state looks to the auditor, and not to any other officer, to determine whether a warrant has been issued in conformity with the law, and the state holds him responsible for the allowance of an illegal claim and the issuance of an invalid warrant. Hence to divest him of discretion in the allowance of claims and the issuance of warrants would prohibit him from performing the plain duties imposed upon him by law." (Clark v. Carter, XVIII Okla. App. Rep. 458.) Often the exercise of such a power, particularly if it is in an arbitrary way, causes much friction between the auditor and the va-

²⁸R. L. 1910, Sec. 8075.

rious departments and institutions. The claim is often made that this power of discretion has been employed at times for political or personal ends. The only way in which such an abuse of discretionary power may be checked, is to make the appropriation definite enough to cover most of the questions which are likely to arise, or else to outline in some detail the restrictions placed upon the expending officer; thus limiting the auditor's power to that of deciding whether the proper procedure has been followed, whether there is money in the appropriation to meet the claim, and whether the claim is legal.

THE ATTORNEY-GENERAL.

The attorney general is the principal legal authority of the state. He appears for the state and prosecutes and defends all actions and proceedings in the state supreme court and criminal court of appeals in which the state is an interested party. When requested to do so by the governor or by either branch of the legislature, he must appear for the state and defend its interests or prosecute its suits in any other court or before any officer. He attends to all civil cases remanded by the supreme court to any district court, in which the state is a party or is interested.²⁹ It is the duty of the attorney general at the request of the governor, auditor or treasurer, to prosecute any official bond or contract in which the state is interested, upon a breach thereof, and to prosecute or defend for the state all actions, civil or criminal, relating in any way to either of their departments.³⁰ He must give his opinion in writing upon all questions of law submitted to him by the legislature, or either branch thereof, or by any state official, commission, or department. He must consult with and advise the county attorn-

²⁹R. L. 1910, Sec. 8057.

³⁰Ibid, Sec. 8058.

eys, upon their request, in regard to all matters pertaining to the duties of their office, when they furnish a brief of their opinion upon any matter submitted.³¹ Under this power he has quite a large field of action in helping to enforce the state laws within the counties. In certain important cases the work of prosecution is left almost entirely to him. The law² expressly provides that he shall not furnish opinions to others than those enumerated in the law. Whenever requested by any state officer, he prepares proper drafts of "contracts, forms and other writings which may be wanted for the use of the state."³³

The attorney general acts as state bond commissioner. He prepares forms and prescribes a method of procedure for the issuance of public securities and bonds, in any county, township, municipality or other political subdivision of the state. He also passes upon all such securities as to legality and procedure. When securities receive the certificate of the bond commissioner, they become incontestable in any court in the state, unless suit shall be brought upon them in a court of competent jurisdiction within thirty days from their approval by the attorney general.³⁴ No bonds issued by any political or municipal subdivision of the state are valid without such approval.³⁵ The attorney general, however, does not pass upon the expediency of bond issues, or upon the construction of engineering features of the projects for which they are to pay. In fact, there is no department in the state to pass upon these important matters.

³¹Ibid, sec. 8059, as amended by S. L. 1919, Ch. 215, Sec. 5.

³²Ibid.

³³Ibid, Sec. 8060.

³⁴R. L. Okla. 1910, Secs. 376 and 377.

³⁵Ibid, Sec. 378.

Under the so-called attorney general's law,³⁶ the attorney general, upon his own motion, or upon request of the governor, takes action for the removal or suspension of certain state, county and municipal officers who are apparently failing to perform their duties. The duties of the attorney general under this law are fully discussed in chapter XXII, Administrative Control over Oklahoma Cities.

Several minor duties are laid upon the attorney general by law. He is provided with a staff of assistant attorneys general, who are assigned to particular departments of the state government or who are given special duties to perform under him. These assistants are appointed by the attorney general with the approval and consent of the governor.³⁷

THE STATE TREASURER.

The state treasurer has charge of all public moneys which come into the state treasury, and pays them out upon the presentation to him of warrants issued by the auditor.³⁸ Warrants redeemed by him are deposited with the auditor.³⁹ He is required to keep an accurate account of all receipts and disbursements of the treasury.⁴⁰ He must keep state tax records for each of the counties of the state, in which he charges the county with the amount of the tax levied, according to the statements of assessments and levy transmitted to him by the state auditor, and credits it with the amounts received from the county treasurer.⁴¹ He submits a

³⁶S. L. Okla. 1917, Ch. 205.

³⁷S. L. 1916, Ch. 34.

³⁸R. L. 1910, Sec. 8136 and S. L. 1915, Ch. 4.

³⁹Ibid, Sec. 8141.

⁴⁰Ibid, Sec. 8137.

⁴¹Ibid. Sec. 8138.

report to the governor semi-annually. Biennially, preceding each regular session of the legislature, he hands to the governor a report containing "a full and true exhibit of the state of public accounts and funds, the amount by him received, the amount paid out during the preceding fiscal term and the balance remaining in the treasury, together with an exhibit of the accounts of the several organized counties, which biennial report shall by the governor be transmitted to the legislature."⁴² It is noticeable that neither the reports which the auditor makes to the legislature, nor those of the treasurer, show the accounts of the state upon an accrual basis. This means that the legislature is not able to get an accurate picture of the financial condition of the state. The nearest approach to adequate financial statistics which the governor and the legislature receive consists of the report made by the state examiner and inspector.

The state treasurer has charge of the deposit of "all moneys, funds, rentals, penalties, costs, proceeds of sale of property, fees, fines, forfeitures, and public charges of every kind that may be received by any state officer, state board, state commission, or by any employee of either of such officers, boards or commissions by virtue or under color of office."⁴³ These moneys when so received by the state treasurer are deposited by him daily in banks designated and qualified as depositories. The governor, the attorney general and the state treasurer are authorized to select the banks acting as depositories.⁴⁴ The treasurer must give bond to the extent of \$50,000⁴⁵ and is also liable for loss caused by negligence.⁴⁶

⁴²R. L. 1910, Sec. 8142.

⁴³S. L. 1915, Ch. 238.

⁴⁴Ibid.

⁴⁵R. L. Okla. 1910, Sec. 8135.

⁴⁶Ibid. Sec. 8145.

THE STATE EXAMINER AND INSPECTOR.

The state examiner and inspector must have had at least three years' experience as an expert accountant, in addition to the usual qualifications required of state executive officers.⁴⁷ Part of his duties are laid down by the constitution. These include the duty of examining at least twice in each year, without previous notice, the books, the accounts, and the cash on hand or in bank, in charge of the state treasurer and each county treasurer. In order to make this examination thoroughly, he has the right to take complete possession of any treasurer's office for the time being. A report as to every such treasurer must be published by the examiner and inspector at least once each year. He also prescribes a uniform system of bookkeeping for the use of all treasurers.⁴⁸

Statutes supplement the constitution in respect to the duties of the examiner and inspector. These statutes largely repeat the constitutional provisions and then add certain specific duties. He must examine the books and accounts of all state officers whose duty it is to collect, disburse or manage funds of the state, at least once each year; and whenever called upon by the governor, he must examine the books and accounts of any officer of the state or any of his predecessors.⁴⁹

He must examine and report upon the books and financial accounts of the several public, educational, charitable, penal and reformatory institutions belonging to the state, enforce correct methods of keeping financial accounts of state institutions, instruct the proper officers thereof in the performance of their duties, and examine

⁴⁷Const. Art. VI, Sec. 19.

⁴⁸Const. Art. VI, Sec. 19.

⁴⁹R. L. Okla. 1910, Sec. 8119.

the books and accounts of all public institutions under the control of the state at least once each year. Officers of such institutions who refuse or wilfully neglect to comply with his directions as to the keeping of accounts within such reasonable time as he prescribes are deemed guilty of a misdemeanor⁵⁰.

The law repeats the constitutional provision which gives to the state examiner and inspector the power of prescribing a uniform system of bookkeeping for all treasurers. Full authority is given him also to prescribe a system of bookkeeping for all county officers, "and expose false and erroneous systems of accounting, and, when necessary, instruct or cause to be instructed the state and county officers in the proper mode of keeping the accounts." He is required to make a thorough examination of the books, accounts and vouchers of such officers, and to report to the governor the refusal or neglect of any state or county officer to obey his instructions. The governor may cause the result of such examination to be published⁵¹. Officers are required to afford facilities for such investigations, and hindering the examination or refusal to search for information required by the examiner and inspector is a misdemeanor, punishable by a fine of one thousand dollars or a year's imprisonment in the county jail. The law makes it the duty of the examiner and inspector, upon the request of the county commissioners of any county, or upon request to the governor, signed by five per cent of the legal voters of any county, and by order of the governor, to examine or cause to be examined by duly appointed deputy or deputies, the books and accounts of all or any officers or custodians of the various funds of the county. Payment for such examination is

⁵⁰Ibid. Sec. 8120.

⁵¹Ibid. Sec. 8121.

made out of the contingent fund of the county so examined. While this provision may help to straighten out the confusion of county accounts in some instances, and may also serve as a check upon wrong usages, it does not appear to go far enough. Conditions have to be in extremely bad shape before five per cent of the voters of a county petition the governor to have the county affairs examined. It is much like locking the door after the horse is stolen. Again, county financial affairs may get into a tangle because of ignorance on the part of the elected county officials. What is needed is a continuous control over all county officials, by a responsible state officer. Possible methods of exercising this control will be described later.

It is made the duty of the examiner and inspector to examine all levies to raise public revenue, in order to determine whether they are made according to law and constitutional provisions. He has the power to order all excessive or erroneous levies to be corrected by the proper officers, and is required to report any irregularities to the governor.

The difficulties which arise from having the examiner and inspector prescribe the accounting system for all treasurers of public institutions in the state, while the auditor prescribes forms and procedure for the collection of revenues, and the governor prescribes the classification of accounts for the budget, should be obviated by giving all such functions to one official. Probably the examiner and inspector should not only possess these functions, but should be an officer of the legislature (perhaps under the title of comptroller general) to check up on the work and the accounts of all the different departments of the state. As such, his reports to the legislature would be reports of administrative needs, administrative short-

comings, and methods of bettering conditions. He should have sufficient auditing control over all the various departments and institutions to see that the will of the legislature was being carried out in their use of their appropriations. Handling the details of passing upon claims issued, and of issuing warrants for the payment of these claims, would seem to be the proper function of the auditor, who should be an officer of the executive branch of the government. Whether by these means or by others, the whole accounting system of the state should be integrated, in respect to the accounting for revenue, in respect to the accounting methods of all the various institutions and departments, and in respect to the budget.

OTHER ADMINISTRATIVE OFFICERS.

The following officials are connected with the state administration, but are not constitutional executive officers:

The state bank commissioner, the state fire marshal, the state health commissioner, the state game warden, the pardon and parole attorney, the state highway commissioner, the adjutant general, the state librarian, the warden of the state penitentiary, the warden of the state reformatory, the director of the state geological survey, and the commissioner of pensions.

Other chapters in this book cover the work of all of the foregoing⁵² whose duties need to be described, except the state fire marshal.

⁵²State Bank Commissioner, Ch. XIII; State Health Commissioner, Ch. XIV; State Game Warden, Ch. XV; Pardon and Parole Attorney, Ch. III; Adjutant General, Ch. III; State Highway Commissioner, Ch. XVI; State Librarian, Ch. XVII; Warden of State Penitentiary, Ch. XVIII Warden of State Reformatory.

THE STATE FIRE MARSHALL.

The state fire marshal is appointed by the governor, with the advice and consent of the senate⁵³. He appoints a chief assistant who is removable by him, and who assists him and acts in his place when he is not able to perform his duties⁵⁴. Together with the chief of the fire department of every city or village in which a fire department is established, the mayor of every incorporated town or village in which no fire department exists, and the sheriff of the county, the state fire marshal investigates the "cause, origin and circumstances" of every fire. It is his duty to make special investigation to see whether or not a fire was the result of carelessness or design. The state fire marshal keeps in his office all records in respect to fires and from them compiles statistics. In carrying out his duties he may take testimony, administer oaths, and cause any person whom the evidence indicates to be guilty of arson or other criminal conduct in respect to fires to be arrested and charged with such offense⁵⁵. The salary of the state fire marshal and the expenses incurred by him in performing his duties are defrayed by the fire insurance companies doing business in the state by a one-fourth of one per cent tax upon the gross premium receipts.⁵⁶

ADMINISTRATIVE BOARDS.

The various boards, commissions, and bodies of like nature which perform special administrative duties may be classified in a rough way according to the nature of

⁵³S. L. 1911, Ch. 46.

⁵⁴Ibid.

⁵⁵Ibid.

⁵⁶Ibid.

their functions. The following classification seems a convenient one⁵⁷:

1. Management of State Business.

Board of Affairs, State Election Board, Commissioners of Land Office, State Board of Equalization, Assistant Attorneys General.

2. Education, Reform, Charity, etc.

State Board of Education, Board of Commissioners for Adult Blind, Board of Managers of Eleemosynary Institutions, Childrens' Code Commission, State Historical Society, Library Commission, State Geological Survey, State Board of Vocational Education, Soldiers' Relief Commission, Text Book Commission, Board of Regents of University of Oklahoma, Board of Regents of Oklahoma Military Academy, Board of Regents of Oklahoma College for Women, Board of Regents of Oklahoma State Business Academy, Board of Regents of School of Mines and Metallurgy, Board of Regents of Miami School of Mines, Board of Regents of Colored Agricultural and Normal University, Educational Survey Commission.

3. Regulation of Business and Industry.

Corporation Commission, Industrial Commission, Board of Agriculture, State Banking Board, State Insurance Board, Assistant Mine Inspectors, State Board of Arbitration and Conciliation, Fraternal Insurance Board, State Issues Commission, State Mining Board, State Market Commission, State Warehouse Commission.

4 Examining Boards.

Board of Medical Examiners, Examining Board for Nurses, State Board of Veterinary Examiners, State

⁵⁷This list includes all the boards mentioned in the State Directory embodied in the 1921 S. L. of Oklahoma, and some others.

Board of Embalmers, State Board of Pharmacy, State Board of Accountancy, State Board of Dental Examiners, State Bar Commission, State Board of Optometry, State Board of Chiropractic Examiners, State Board of Osteopathic Examiners.

5. Miscellaneous.

Trustees of Confederate Soldiers' Home, Trustees of Union Soldiers' Home, Soldiers' Memorial Commission, State Cemetery Board, State Fish and Game Commission, Uniform Laws Commission.

The duties of certain of these bodies, in particular the examining boards, are evident from their names. Various other boards and commissions have been discussed elsewhere in this book. (See index.) The present chapter, then, will consider in detail only the boards with important special functions, which have not been treated in other connections.

THE STATE BOARD OF AFFAIRS.

Because of the extent of its powers and the nature of its duties, the board of affairs is one of the most important boards in the state government. This board consists of three members, not more than two of whom shall be members of the same political party, and each of whom shall be experienced in public affairs and shall be a qualified elector of the state. They are appointed by the governor, by and with the advice and consent of the senate, for a term coterminous with that of the governor making the appointment. The governor may remove any member of such board from office whenever in his opinion the public interest requires it⁵⁸. The board of affairs has charge of the "construction, repair, maintenance, in-

⁵⁸R. L. 1910, Sec. 8079.

insurance and operation of all buildings, used or occupied by or on behalf of the State; it shall have authority to purchase all material and perform all other duties necessary in the construction, repair and maintenance of all such buildings; it shall make all necessary contracts by or on behalf of the State for any buildings or rooms rented for the use of the State or any of the officers thereof.....It shall have the custody and control of all state property, and all other property managed or used by the State, except military stores and such as come under the control of the state banking department; it shall procure all necessary insurance thereon against loss"

⁵⁹. This board furthermore contracts for, purchases and acquires all furnishings, furniture and supplies of "every kind or description for the use of the State or its officers, or the support of the several state institutions, including printing, stationery, fuel, tools, implements, furniture, books, food, clothing and medical supplies, where the law requires the State to furnish the same⁶⁰." It will thus be seen that this board acts as a large central purchasing agent in securing state supplies of every description.

What restrictions are put upon this sweeping grant of authority? In the first place, the members of the board of affairs are prohibited from engaging in any other business while they are in the service of the board⁶¹. In the second place, they must make at the end of each quarter full and complete reports of their transactions, and must "specifically set out all purchases made and financial transactions had during that quarter".⁶² The

⁵⁹R. L. 1910, Sec. 8082.

⁶⁰Ibid, Sec. 8083.

⁶¹Ibid, Sec. 8085.

⁶²Ibid, Sec. 8088.

taking of rebates or a "percentage of contract, money or any other thing of value from any person, firm, or corporation offering, bidding for, or in the open market and seeking to make sales to said board, shall be deemed a felony," punishable by a fine not to exceed five thousand dollars and imprisonment in the penitentiary not less than five nor more than ten years⁶³.

Beside acting as a purchasing agent, the board of affairs acts as the controlling board for the two state insane hospitals, the institution for the feeble-minded⁶⁴, the state penitentiary and the reformatory⁶⁵. In respect to fiscal matters this board controls the State Training School for White Boys, the State Industrial School for White Girls, the East Oklahoma State Home for White Children, The West Oklahoma State Home for White Children, the State Training School for Colored Boys, the State Training School for Colored Girls, and the Deaf, Blind, and Orphans' Home for Colored Children⁶⁶. The state tubercular hospital is also under the control of the state board of affairs⁶⁷. If this board is to act as a proper purchasing agent its control over certain penal and eleemosynary institutions should be taken away from it and lodged with the commissioner of charities and corrections where it properly belongs.

The board is required to furnish information concerning the location, grade, quality and cost of different kinds of building material in the state used in public buildings⁶⁸.

⁶³Ibid, Sec. 8090.

⁶⁴S. L. 1917, Ch. 174.

⁶⁵R. L. 1910, Secs. 7117; 7126; S. L. 1915, Ch. 57, S. L. 1917, Ch. 211.

⁶⁶S. L. 1916, Ch. 188.

⁶⁷S. L. 1917, Ch. 171.

⁶⁸S. L. 1911, Ch. 76.

It must make and keep an inventory of all state property⁶⁹, and it has authority to sell and exchange state property and to transfer personalty from one department to another⁷⁰. Several minor functions are also given to this board.

COMMISSIONERS OF THE LAND OFFICE.

The governor, the secretary of state, the state auditor, the superintendent of public instruction, and the president of the board of agriculture, constitute the commissioners of the land office, popularly called the school land commission. They have charge of the sale, rental, disposal and managing of the school lands and the other public lands of the state, and of the funds and proceeds derived from these lands, under rules and regulations prescribed by the legislature⁷¹. These lands and funds are described in chapter X.

SOLDIERS MEMORIAL COMMISSION.

This commission consists of five members. The governor is ex officio chairman, and the other members are appointed by him. One member of this commission, however, must be a woman, and one a soldier who saw active service in the world war. All members serve without pay save actual and necessary traveling expenses. It is the duty of this commission "to secure plans, designs and estimates" for a memorial "to those who gave their lives for their country in the World War," the cost of which shall not exceed \$500,000. This memorial is to be erected on a site to be selected by the commission, convenient to the capitol and upon land owned by the state of Okla-

⁶⁹S. L. 1913, Ch. 197.

⁷⁰Ibid.

⁷¹Const. Art. VI, Sec. 32.

homa¹². Since the 1921 legislature made no appropriation for carrying out this law, it is questionable whether this commission is still functioning.

STATE GEOLOGICAL COMMISSION AND SURVEY

The state geological commission is composed of the governor, the president of the state university, and the state superintendent of public instruction¹³. The members serve without pay except that they are reimbursed for actual and necessary expenses incurred in the performance of their duties. They have general supervision over the state geological survey, the director of which is appointed by them. This director must be a geologist of established reputation. With the approval of the commission he chooses his own assistants and employees.

The state geological survey, which is located at the state university, has the following objects:

“First. A study of the geological formations of the State with special reference to its mineral deposits, including coal, oil, gas, asphalt, gypsum, salt, cement, stone, clay, lead, zinc, iron, sand, road building material, water resources and all other mineral resources.

“Second. The preparation and publication of bulletins and reports, accompanied with necessary illustrations and maps, including both general and detailed descriptions of the geological structure and mineral resources of the State.

“Third. The consideration of such other scientific and economic questions as, in the judgment of the commission, shall be deemed of value to the people¹⁴.”

¹²S. L. Okla. 1919. Ch. 4.

¹³R. L. 1910. Sec. 8125.

¹⁴Ibid. Sec. 8126 and 8127.

The director presents to the governor a biennial report concerning the work of the survey⁷⁵.

STATE CEMETERY BOARD

The state cemetery board, which was established by the 1919 legislature, consists of three members appointed by the governor. The board is directed to procure by purchase, condemnation or donation a tract of land of not more than three hundred and twenty acres to be known as the Oklahoma State Cemetery. United States soldiers and marines, army nurses, the wives or husbands of the foregoing, any former state or territorial elective officials or members of Congress, members of the state militia, and any person to whom the legislature shall "by resolution, extend this privilege," may be buried in this cemetery. It is to be located with the advice and consent of the governor. The board makes such rules and regulations as may be necessary for the care of the cemetery⁷⁶.

CRITICISMS AND RECOMMENDATIONS.

From our examination of state administration in this chapter, and from the more detailed descriptions of certain boards and officials found in chapters dealing with special functions, it is evident that the present administrative system of Oklahoma is irresponsible, inharmonious, illogical, cumbersome, and expensive.

Responsibility in government depends upon definite accountability to a superior authority; and this is entirely lacking in our system of administration. Theoretically the elected administrative officers are accountable to the people; but this theory is without foundation in fact. The people have no method for determining a candidate's

⁷⁵Ibid, Sec. 8128.

⁷⁶R. L. 1919, Ch. 153.

fitness for an administrative position, or for judging how well or how poorly he does his work. nor can detailed administrative problems be presented as campaign issues; so that there is absolutely no way of holding an administrative officer responsible to the people for the quality of his work. This means that political astuteness rather than merit will often be the winning force in a campaign; and the result of such a situation is to disgust really qualified men and deter them from seeking office; and to encourage the type of man who dreads responsibility but thrives upon political "pork", to apply for positions properly demanding expert ability.

Though responsibility to the people does not exist, no provision is made for holding the state administrative officers responsible to the governor, who should be logically the head of the administrative system. The elected officials are not answerable to him in any way; while his power over the appointed officers and boards, though considerable, is yet limited by many legislative provisions⁷⁷. Consequently there is nowhere in the state government a definite, centralized responsibility for efficient administration.

The scattering of administrative functions among so many independent and semi-independent officers, commissions and boards makes the administration inharmonious; while the haphazard manner in which functions are distributed makes it illogical. It is cumbersome because it has been developed through a series of accretions, a new agency having been established for every new function; and it is expensive: first, because of the multiplicity of agencies; second, because so many of the more important administrative positions are elective that any incumbent

⁷⁷See Chapter III, pages ----.

who desires to be reinstated must spend a large part of his present term of office in campaigning for another term; while any subordinates appointed by him will be chosen for their ability as party workers rather than their qualifications for their ostensible duties⁷⁸.

The remedy for the existing situation would seem to involve two main steps: first, organizing the state administrative functions into a few departments under the control of the chief executive; second, abolishing all of the present boards, commissions and minor offices and establishing in their place bureaus or divisions under the few departments thus created.

In case some form of parliamentary organization were adopted, which from the standpoint of planning for legislation and the budget, at least, seems highly desirable, probably the governor should be elected. He would act as the formal representative of the state; and would appoint a chief executive officer to be the working head of the administration. The chief executive officer would then in turn appoint the heads of the various departments.

In case the present system of separating the executive and the legislative bodies were adopted, the election of administrative and executive officers should be confined to the governor and lieutenant governor. All others should be appointed by the governor (except perhaps a

⁷⁸A recent editorial, entitled "The Melancholy Days Have Come," (Harlow's Weekly, May 26, 1922.) well expresses this deplorable situation. "The business of the state begins to be seriously impaired because of the primary campaign, which will develop an increasing hold upon the state's officers with each succeeding day of the next two months. It is an unfortunate phase of our governmental structure which makes it necessary that government be so severely dislocated for most of one year out of four. There will be no real peace in government in this state until after the November election, and it is precisely similar every four years."

comptroller general who should be appointed by the legislature) just as all heads of departments in the national government are appointed by the president.

Under either system, these officers should form a cabinet for the discussion of state policy and for the harmonious working out of administrative details. All special and minor functions now entrusted to the various boards, commissions and officers should be placed under these departments. There are always differences of opinion as to what departments should be created, and what duties should be given to each. By and large, however, all activities of government can be conveniently grouped under about a dozen functions, to which the departments should largely correspond. For the purpose of making more definite the plans for a possible reorganization, the following departments are suggested: Finance, Education, Public Works, Justice, Public Welfare, Agriculture, Trade and Commerce, Labor, Health, Local Government, Military and Civil Service and Registration.

The finance department would be organized into several bureaus and should have charge of detailed auditing⁷⁹, the assessment of taxes, tax collection, the preparation of the budget, the custody and control of money, and the accounting and reporting of financial conditions for the benefit of the executive departments. The management of the school land funds should also be placed under the control of this department.

The education department should have supervision over education, the examining of teachers and the granting of

⁷⁹As explained elsewhere, the auditing function should be entrusted to two different departments of government, the mere details of the work being done by an executive auditor, while the prescribing of forms and systems, the checking up on administrative efficiency, and the making of reports to the legislature should be in the hands of a comptroller general, responsible to the legislature.

certificates. It might be advisable to give the function of the selection of text books to this department in case text books are still selected for all the schools of the state. The work of selecting the books might well be placed in charge of a highly trained specialist in education.

Most of the functions now carried on by the state architect, the custodian of the state capitol, the state board of affairs, the highway department, the monument commission and all public enterprises involving engineering, construction, etc., should be under the control of a department of public works.

The department of justice might well be organized in two divisions, the division of legal information and the division of law enforcement. The division of legal information should have charge of most of the functions now belonging to the attorney-general, except the approval of municipal and county bonds, which might well go to the local government department. In case the local government department were given administrative control over municipal and county officials, the powers in respect to such officers now lodged in the attorney general under the "attorney general's law" might well be transferred to it.

The division of law enforcement should have general administrative control and supervision over the sheriffs and prosecuting officers of the state⁸⁰. These officers might be put under the civil service and appointments might be made from time to time from the three or four candidates highest on the list.

The department of public welfare should be given jurisdiction over all penal, charitable and reformatory

⁸⁰See the chapter on Local Government, Chapter XIX, for reasons for putting such officers under state control.

institutions of the state, which is now exercised by the state board of affairs, the board of managers, the board of commissioners for the blind, the two boards of trustees of the soldiers' homes, the commissioner of charities and corrections, etc⁸¹. It might well have within its organization a board of pardon and parole, which would investigate all requests for pardons and paroles, and, perhaps after full hearing, grant or deny such requests. If the governor is to become the active head of administration, as this plan of reorganization contemplates, he should not be burdened with the pardoning of those convicted of crimes, for nothing at present takes much more of a governor's time than this function. The board of public welfare, having its agents throughout the state in the form of local welfare officials⁸², and being in intimate touch with the penal, charitable and reformatory institutions of the state, is in a strategic position to gather the facts, to know prison records and to help keep the one pardoned or paroled in the straight and narrow path afterward. This board should supervise the work of all probation officers. It should also have charge of the licensing of unincorporated agencies of charity in the state. One of its most important functions should be administrative supervision over all the county welfare boards⁸³.

The department of agriculture should carry on nearly the same functions that it does at present⁸⁴ except that the work of the game and fish warden should be transferred to this department. It should also have general supervision over the county departments of agriculture which are discussed in the chapter on local government.

⁸¹See Chapter on Care of Special Classes, Chapter XVIII.

⁸²See Chapter on Local Government, Chapter XIX.

⁸³Described in the chapter on Local Government, Ch. XIX.

⁸⁴See Chapter XV.

The department of trade and commerce should have charge of the regulation of business and industry. This important work should be distributed among several large divisions or boards. The first of these should have charge of the regulation of public utilities. The second should regulate corporations and pass upon stock issues—the work now done by the issues commission. The third division should regulate banks and trust companies, while the fourth should regulate insurance. A fifth division might well have charge of the conservation of natural resources.

The department of labor should be created to administer the workmen's compensation laws, the factory inspection laws, the mine inspection laws, and the laws in regard to arbitration and conciliation. This department should also conduct free employment bureaus, and perform other functions made necessary by changes in laws or economic conditions.

As it would seem highly advisable to remove state administration as far from politics as possible, secure employees with training adequate to their duties, and also provide well trained, non-political employees for county positions, a state civil service and recording department should be created. Examinations should be given for all positions non-administrative and merely technical in their nature, except perhaps where unusual qualifications are demanded. In general, this would mean that all the officers and employees below the rank of bureau or division head would be appointed from the civil service. Due to the extreme importance of having the functions of the county carried out efficiently and without excessive cost it would be highly desirable to have all county employees except the commissioners, the manager, and the heads of the suggested departments, ap-

pointed from those who have passed state civil service examinations.

The present functions of the secretary of state could well be given to a special division of the civil service and recording department. Probably all the examining and licensing of those wishing to practice professions should be under the control of such a department. The bar association, the medical association, etc., might well act in an advisory capacity, in preparing examination questions and determining tests of proficiency. Most of the actual examinations, however, should be conducted by the civil service department.

The department of health should have the power, in connection with the advisory public health council⁸⁵, to enact a state sanitary code, to supervise and direct all local health authorities, to gather vital statistics, and to make extended investigations as a basis of legislative action.

The military department might well remain as at present under the control of the governor and the adjutant-general.

The local government department should have supervision of certain kinds over both counties and cities. Its authority over cities should include, as is explained more in detail in Chapter XXII, help in the organization of the city government or the adoption of its charter, control over city officials in respect to their administrative efficiency, particularly in the smaller towns and cities of the state, supervision over health and sanitation, supervision of public works and municipally owned public utilities, and certain control over municipal finance. This department should have similar control over the county.

⁸⁵Described in Chapter XIV.

By requiring reports, examining finances, and making proper kinds of inspection, it should be able to insure efficient county administration. It might well be given large financial control over counties. It should audit all county accounts, supervise the borrowing policy of the county, pass upon the legality of bond issues and require uniform reports from all county officers.

Such a department should also act in an advisory capacity for all county and city officials. With the help of this department, the work of city and county administration would become more efficient and far less costly than at the present time.

In establishing these departments, the constitution should merely outline their organization, leaving all details to be filled in by the legislature, or, better, by the administration itself, under a system of administrative ordinances. If the constitution attempts to organize departments in detail, a highly inflexible system is established which cannot be changed to meet varying conditions. The matter of salaries for these officers should be left to the legislature, which should fix them at a figure large enough to attract men of the highest qualifications.

Besides these departments there should be established a scientific staff to help the administration collect information, make suggestions and work out the details of policy. Such a staff should be composed of individuals with a high degree of training in governmental work, should be appointed, after very strict examination, by the executive, and should not be changed with changing administrations. The fund of information which they would soon accumulate would be of enormous value to the state in carrying on its work.

To summarize: The present scattered, unsystematic,

and irresponsible administrative organization of this state should be replaced by a unified, logical, and responsible organization, removed as far as possible from political influences, and managed by a carefully selected and well qualified personnel.

CHAPTER V.

THE JUDICIARY

The judicial power of the state of Oklahoma "is vested in the Senate, sitting as a court of impeachment, a Supreme Court, District Courts, County Courts, Courts of Justices of the Peace, Municipal Courts and such other courts, commissions or boards, inferior to the Supreme Court, as may be established by law¹." It will possibly lead to a clearer understanding of this judicial system, if we begin with the court of lowest and proceed to the court of ultimate jurisdiction, rather than if we follow the sequence given in the constitution².

JUSTICE OF THE PEACE.

The court of lowest jurisdiction in the state is the justice of the peace court. The constitution is silent as to the number of justice courts that may be created, except for the provision that one such court shall exist for each county, having jurisdiction coextensive with the county; and that two such courts shall exist in cities over twenty-five hundred in population³. The county commissioners are directed by law to create in their counties at least six justice of the peace districts. To this they may add additional districts as the public necessity requires, but there shall not be more than one justice court for each voting precinct⁴. Any city or town having over

¹Art. VII, Sec. 1, Constitution.

²For a full consideration of the laws regulating judicial procedure, the student is advised to read R. L. 1910, Ch. 60, 61, 62, 63, dealing with civil and criminal procedure.

³Art. VII, Sec. 18, Const.

⁴R. L. 1910, Sec. 2051, 2055.

fifteen hundred people shall have one justice of the peace court; over twenty-five hundred, two justice courts; and cities over twenty-five thousand, one additional justice court for each ten thousand people⁵. The justice courts in the cities are in addition to the six districts created by the county commissioners.

One justice of the peace and one constable are elected for each district at each biennial election to serve for a period of two years; and in case of a vacancy a justice is appointed by the county commissioners until the next regular election. Any qualified elector who is a resident of the district may serve as justice of the peace, except in cities, where he must be licensed to practice as an attorney at law. A constable elected for every justice district is vested with the duty of apprehending all violators of the criminal laws, preserving the peace, and serving all writs, warrants and executions delivered to him⁶. He performs the same duties for the justice courts that the sheriff of the county performs for the county and district courts.

The jurisdiction conferred upon the justice of the peace courts is coextensive with the county in which the justice is elected; however, should an action be brought against one or more defendants, jointly or severally liable, such action may be brought before any justice court of the county in which either of the defendants may reside or be summoned, and the sheriff of any county may be directed to bring in the co-defendants in such county⁷.

The justice of the peace court has limited jurisdiction in both civil and criminal cases. Under the con-

⁵R. L. 1910, Sec. 2054.

⁶R. L. 1910, Sec. 2053, 2054, 2070.

⁷R. L. 1910, Sec. 5351.

stitution, the civil jurisdiction of the justice of the peace court is limited to actions for the recovery of money where the amount does not exceed \$200, exclusive of interest⁸. In addition, the justice of the peace has been given by law original jurisdiction to try all actions for forcible entry and detention of real property⁹, and cases of trespass to real property where the damages claimed do not exceed \$200¹⁰. To dispose properly of a matter within his jurisdiction, the justice of the peace may issue orders to attach goods of debtors in certain cases, and to subpoena and compel the attendance of witnesses in cases before him. He has power also, to issue orders for the sale of property to satisfy judgments rendered by him, to proceed against sureties for costs and bail for the stay of execution, to proceed against constables who fail to perform their duty, and to solemnize marriages¹¹. Jurisdiction is denied in actions brought to recover damages for assault and battery; for libel, slander and malicious prosecution; against justices and other officers; for specific performance of contracts for the sale of real property; and in actions where the title to real property is involved¹². Civil cases in the justice of the peace court are tried without a jury, but either party has a right to request a jury by making proper guarantee for the payment of the jurors¹³. A jury in the justice court consists of six qualified jurors, any five of whom may agree upon a verdict, but the parties, by agreement, may have a jury of fewer than six¹⁴.

Any party may take an appeal from the judgments

⁸Art. VII, Sec. 18, Const.

⁹R. L. 1910, Sec. 5503.

¹⁰R. L. 1910, Sec. 5356.

¹¹R. L. 1910, Sec. 5352.

¹²R. L. 1910, Sec. 5358.

¹³For selection of jurors in Justice of Peace Court, See p 165.

¹⁴R. L. 1910. Sec. 5438.

rendered in the justice of the peace court by notifying the justice and the adverse party of such an appeal; and the justice must within thirty days from the date of the judgment, transmit to the appellate court all the records in the action, and the cause is tried *de novo* as to both law and fact in the appellate court on the original record¹⁵. However, no appeal may be taken from a confession of judgment, nor may an appeal be taken from the justice of the peace court in any case involving less than twenty dollars¹⁶.

For the purpose of proper classification, all crimes or public offenses are of two kinds: felonies and misdemeanors¹⁷. Felonies include all crimes punishable by death or imprisonment in the penitentiary, while misdemeanors include every other crime. In the exercise of its criminal jurisdiction, the justice of the peace court may try and determine all crimes less than felonies committed in the county, where the punishment does not exceed a fine of two hundred dollars, or imprisonment in the county jail for thirty days, or both fine and imprisonment¹⁸. Thus all crimes, classed as felonies, and a great portion of misdemeanors are excluded from its jurisdiction. If, during the trial, it appears that the defendant is guilty of a misdemeanor, the punishment for which is beyond the jurisdiction of the justice of the peace court, the justice must certify the cause to the county court for trial¹⁹. Criminal cases, like civil cases in the justice court, may be tried with or without a jury. Should

¹⁵Art. VII, Sec. 18, Const.

¹⁶S. L. 1913, Chap. 135.

¹⁷R. L. 1910, Secs. 2085, 2086, 2087. For the various kinds of crimes and their punishment, see Chapter 23, R. L. 1910.

¹⁸Art. VII, Sec. 18, Const.

¹⁹R. L. 1910, Sec. 6170.

either party require a jury, it shall consist of six jurors, any five of whom may render a verdict²⁰.

Any defendant convicted of the commission of a crime in the justice court may appeal, by filing within ten days, good and sufficient bond, guaranteeing his appearance before the appellate court and payment of any fine adjudged against him²¹. Such an appeal is a matter of right and may be taken either to the county, superior or district court. If the defendant remains in jail awaiting the disposal of his appeal, he is given credit on his fine at the rate of two dollars per day; and if his fine is liquidated before his appeal is disposed of, he is discharged without further proceedings²². No appeal from the justice court is dismissed; the appellate court must either convict or acquit the defendant.

In addition to the trial of certain misdemeanor cases, the justice of the peace has jurisdiction as an examining and committing magistrate²³. To understand this jurisdiction better, it might be well to consider the various steps in the course of criminal prosecution. The bill of rights of the Oklahoma constitution makes certain guaranties to the individual citizen, among them being that no person shall be prosecuted for the violation of the criminal law in a court of record, ecuted without being first indicted or without the filing of an Persons charged with a misdemeanor over which the justice of the peace has jurisdiction may be prosecuted without being first indicted or without the filing of an

²⁰4 Okla. Cr. 324, 111 Pac. 656.

²¹R. L. 1910, Sec. 6183.

²²Ibid.

²³Art. VII, Sec. 18, Const.

²⁴Art. II, Sec. 17, Const.

information but may be tried by the justice without a jury, upon a complaint properly verified by the persons bringing such accusation; but any person charged with a misdemeanor over which the county court has sole jurisdiction, must be tried upon information without indictment, unless the judge orders a particular misdemeanor to be presented to the grand jury.²⁵ A person charged with a felony shall be prosecuted only upon indictment or information.

No person shall be prosecuted for felony by information unless first subjected to preliminary examination before an examining magistrate.²⁶ Conducting such examinations is the chief duty of the justice of the peace in the exercise of his criminal jurisdiction. Any person knowing of the commission of a public offense and knowing the offender, brings a complaint verified under oath before the magistrate, who, being satisfied that the offense has been committed by the defendant, issues a warrant for his arrest.²⁷ When the defendant is brought before the magistrate, the magistrate immediately informs him of the offense charged against him and his right to counsel,²⁸ and proceeds with a preliminary examination. During the course of the examination, witnesses may be summoned for or against the defendant, and he has the right of cross-examination. The defendant should be discharged if it appears to the magistrate that no public offense has been committed or

²⁵R. L. 1910, Sec. 5693.

²⁶The following judicial officers are examining magistrates: Justices of the Supreme Court, Judges of the Criminal Court of Appeals, District Judges, Superior Court Judges, County Judges, Justices of the Peace and Police Judges. R. L. 1910. Sec. 5628.

²⁷As to who is able to make an arrest and under what conditions, see R. L. 1910, Sec. 5645-5666.

²⁸R. L. 1910, Sec. 5667.

if there is insufficient evidence to charge the defendant with the commission of the crime. If, however, there is sufficient evidence to indicate that the defendant has committed the crime, he is bound over to the district court for trial. If the offense is bailable, the defendant may be released from confinement upon giving good and sufficient bond.²⁹ To prevent false and unjust accusations, no preliminary complaint can be filed without the consent of the county attorney; and if the complaint is filed without his consent and the defendant is discharged, the cost of the preliminary examination is taxed against the prosecuting witness, unless the defendant is likely to escape before the county attorney can be consulted.³⁰ The defendant may waive the preliminary examination, in which case he is bound over immediately for trial.³¹

THE JURY SYSTEM.

If the defendant is accused by indictment, such indictment is returned by a grand jury, which is a body of men consisting of twelve jurors impanelled to inquire into all public offenses committed against the state and triable within the county.³² The indictment is an accusation in writing presented by a grand jury to a competent court, charging a person with a public offense.³³ The indictment returned by a grand jury should not be confused with the verdict of a petit jury. The indictment is merely an accusation against the defendant. Under the common law, the defendant is adjudged

²⁹R. L. 1910, Sec. 5682.

³⁰R. L. 1910, Sec. 5674.

³¹Art. II, Sec. 17, Const.

³²R. L. 1910, Sec. 5696. For cases triable within the county, see R. L. 1910, Sec. 5609-26.

³³R. L. 1910, Sec. 5717.

innocent until proved guilty. His guilt or innocence is determined by the petit jury, which tries the case upon the indictment as found by the grand jury. The concurrence of nine of the twelve jurors is sufficient to bring the indictment, which is called a "true bill" and charges the defendant with the commission of the crime alleged.³⁴ If nine jurors fail to find a true bill, the defendant is discharged. A dismissal of the case does not prevent a resubmission if the judge so directs. In the investigation of any crime committed against the state, the grand jury need not hear the evidence for the defendant, but it is the duty of the jury to weigh all evidence presented. The grand jury should return a true bill when in its judgment the evidence, unexplained and uncontradicted, would lead to conviction by a petit jury.³⁵ The power of the grand jury may extend to the investigation of all classes and grades of crime; to the management of public prisons within the county; to corrupt and wilful misconduct of public officers; and such other power as the legislature may impose³⁶. A grand jury is convened by order of the court having power to try felonies on its own motion, or on a petition signed by one hundred resident tax payers of the county.

The jurors for both grand and petit juries are selected by a board of jury commissioners, consisting of three commissioners appointed by the district judge before the first day of January of each year. One commissioner is appointed from each county commissioner's district and not more than two shall be of the same political party. The commissioners shall have the qualifi-

³⁴R. L. 1910, Sec. 5730.

³⁵R. L. 1910, Sec. 5722.

³⁶Art. II, Sec. 18, Const. R. L. 1910, Sec. 5724.

cations of jurors and cannot be interested in any case civil or criminal, pending in any court of the state.

The commissioners meet the first Mondays in January and July and from the tax roll of the county they select two lists, each of not fewer than two hundred names, or more as the judge may prescribe, of persons to serve as jurors for the ensuing term of court. One list contains the names of jurors for the district, and the other for the county court. The name of no person, disqualified to serve as juror,³⁷ or who has served on a jury within the preceding twelve months, shall be included. The last provision was inserted to eliminate the professional juror. The list shall be made up of persons from the various municipal townships, according to the voting strength of each township.

Upon the certification of the list by the commissioners, the name of each person is placed upon a uniform slip and placed in a box, from which are promiscuously chosen enough slips to make up the number of jurors requested by the district judge. Upon the completion of the drawing, separate venires are issued for grand and petit jurors, and served by the sheriff on the person named in the venire, to be present at the time specified. The first twenty-four names drawn, if a grand jury is

³⁷The following may be jurors: every male citizen residing in the state who is a qualified elector of sound mind and discretion and good moral character, except justices of the supreme court; judges of the criminal court of appeals; district, county and superior court judges; sheriff and deputy sheriff; constables; licensed attorneys; habitual drunkards; those afflicted with bodily injury amounting to infirmity; those convicted of some infamous crime or who have served in the penitentiary; persons over sixty years of age; ministers, physicians, undertakers, pharmacists, teachers in the public schools, postmasters, mail carriers, county and district officials, and members of the fire department, are eligible to serve but may claim their exemption as jurors. R. L. 1910, Sec. 3698.

ordered, are summoned to be grand jurors. If a person is not needed as a grand juror, he may be transferred to the petit jury panel. If any fraud has been perpetrated in making up the jury lists the judge may discharge the panel and call for a new list. If at any time during the term of court the panel of jurors should appear insufficient, the jury may be completed from talesmen, or an open venire may be issued to the sheriff for such number of jurors as may be necessary to be selected from the body of the county, but no person shall be a talesman more than once a year.

The selection of jurors for the county court is similar to that for the district court, except that the initial drawing is made up of twenty-four jurors, all of whom serve as petit jurors, since no grand jury is summoned in the county court. If the regular panel for the county court is discharged and the case requires a jury, the judge may issue a venire until twelve jurors are in the jury box. Each party may have three peremptory challenges, and the six remaining jurors try the case.

If a jury is requested by either party in the justice of the peace court, the justice makes a list of eighteen qualified jurors of the county, from which list each party may strike six names, the six remaining constituting a panel. If any of these are disqualified, talesmen shall be selected until a jury is impanelled.³⁸ The number of jurors in the justice or county court is six, any five of whom may return a verdict. But in all of the courts of record the jury consists of twelve jurors. In civil cases and in criminal cases less than felonies, three-fourths of the whole number concurring may render a verdict³⁹.

³⁸R. L. 1910, Sec. 6156.

³⁹Art. II, Sec. 19, Const.

Jurors in a court of record are paid at the rate of two dollars per day for attendance upon court, and five cents per mile to and from the place of attendance, to be paid out of the county treasury; in a coroner's inquest, one dollar and a half per day; and in the justice of the peace court, fifty cents per day, to be paid by the party adjudged to pay costs. Should any irregularity occur in a drawing of a jury, it will not be cause for setting aside a verdict unless a defendant has been deprived of a substantial right.

THE COUNTY COURT.

The constitution further provides for the organization in each county of a county court, presided over by a county judge, who is elected at each biennial election for a term of two years.⁴⁰ The only qualifications of the county judge are that he must be a qualified elector, a resident of the county, and a lawyer licensed to practice in any court of the state. The salary of the county judge is determined by the population of the county, ranging from \$1350 per year in counties less than seven thousand, to \$3000 in counties in excess of sixty thousand.⁴¹

The county court exercises civil, criminal, and also original probate jurisdiction, coextensive with the county. In civil cases the county court has concurrent jurisdiction with the district court, in any amount not exceeding one thousand dollars, exclusive of interest;⁴² except that the county court shall not have jurisdiction to try actions for divorce and alimony, against public officers for misconduct while in office, for slander and

⁴⁰Art. VII, Sec. 11, Const.

⁴¹R. L. 1910, Sec. 1839.

⁴²Art. VII, Sec. 12, Const.

libel, or specific performance of contract for sale of real estate, and cases involving title to real property.” The county court has concurrent jurisdiction with the justice of the peace court in all misdemeanor cases, and exclusive jurisdiction in all misdemeanor cases beyond the jurisdiction of the justice court.

Any party feeling himself aggrieved in a judgment in the county court may appeal directly to the supreme court of the state in civil cases, and to the criminal court of appeals in criminal cases. Such appeals are governed by the laws regulating appeals from the district court. The right of appeal to the higher courts includes appeals from cases originating in the justice or municipal courts.

In the exercise of probate jurisdiction, the county court receives and admits to probate the last will and testament of deceased persons; appoints executors and administrators and settles their accounts; regulates the distribution of property of deceased persons; appoints guardians of minors, and those mentally unfit to manage their own affairs.⁴³ An appeal arising under probate jurisdiction may be taken from the county court to the district court, where the case is tried *de novo* upon questions both of law and fact.⁴⁵

THE DISTRICT COURT.

The district court is a court of general jurisdiction, except for those cases over which the county court and justice court have original jurisdiction. The state is divided into twenty-seven judicial districts, each containing one or more counties. The qualified electors of

⁴³Art. VII, Sec. 12, Const.

⁴⁴Art. VII, Sec. 13, Const.

⁴⁵R. L. 1910, Sec. 1820.

each district elect a judge of the district court for a term of four years, whose salary is four thousand dollars per annum, and who must possess the following qualifications: he must be a citizen of the United States, twenty-five years of age, a resident of the state at least two years, and the district one year, and a lawyer licensed to practice in any court of record, or a judge of the court of record, or both judge and lawyer for a period of four years preceding his election.⁴⁶ In case a district judge is unable to serve or the business of the court requires, the chief justice may assign any other district judge to hold court within the district. If the district judge is disqualified to serve, the parties to the cause may agree upon a judge pro tempore, or in a case of disagreement a judge pro tempore may be elected by the members of the bar present at the term of court.⁴⁷ The county commissioners may, if the business of the court demands, petition the supreme court for an additional judge, in which case the supreme court will recommend that the governor appoint an additional judge to meet the emergency.⁴⁸

The district court has both original and appellate jurisdiction. It has original jurisdiction in all civil and criminal cases, except where exclusive jurisdiction has been conferred upon another court. Misdemeanor cases are never tried in the district court, except on appeal from the justice or police courts; but to relieve the county court of much of its work, the district court has been given concurrent appellate jurisdiction with the county court. The district court has power to issue writs of habeas corpus, mandamus, injunctions, quo warranto,

⁴⁶Art. VII, Sec. 9, Const.

⁴⁷Ibid.

⁴⁸R. L. 1910, Sec. 1782.

certiorari, prohibition, and other remedial writs necessary to carry into effect its judgments.⁴⁹

SUPERIOR COURTS.

The legislature is empowered to establish additional courts, inferior to the supreme court; and in the exercise of this power, it has from time to time established additional courts to meet a pending emergency. In 1910, a superior court was established in every county having more than thirty thousand inhabitants, including a city over eight thousand, this court having concurrent jurisdiction with the district court in all matters within the county, and with the county court in all civil and criminal matters, except matters of probate⁵⁰. The judge of the superior court was appointed by the governor of the state until the general election in 1910, when the qualified voters of each county elected a judge of the superior court for a term of four years with the same qualifications as the judge of the district court. However, it was not long until the superior court was abolished in all except a few counties⁵¹, but subsequent legislatures have re-established superior courts, in certain counties, to relieve congestion in the county and district courts⁵².

THE SUPREME COURT.

The supreme court of the state consists of nine justices, elected by the voters of the state for a term of six years. The state is divided into as many supreme court judicial districts as there are justices, there being one justice from each district. Although one justice is elected from

⁴⁹Art. VII, Sec. 10, Const. For definition of the various remedial writs see Secs. 4882-4927, R. L. 1910.

⁵⁰R. L. 1910, Chap. 20.

⁵¹S. L. 1913, Chap. 77.

⁵²See S. L. 1915, Chap. 20 and other similar statutes.

each district, all the justices are voted upon by the state at large. Voting by the entire state deprives the minority of any representation, and hence violates the principle of proportional representation. Under the system devised by the constitution, the political party in a majority throughout the state elects all the members of the bench, while the minority party, even though strongly represented in certain localities is deprived of any representation. Justices of the supreme court must have the same qualifications as district judges, except that they must be thirty years of age and must have served five years as lawyers or judges. In case of vacancy, the governor appoints a justice of the district until the next general election. A majority of the court constitutes a quorum, and the concurrence of a majority of the court is necessary to give an opinion⁵³. The members of the court elect, on the second Monday of each odd numbered year, one of their own number as chief justice to serve for a period of two years; and at the same time a vice chief justice is also elected, to fill the office of chief justice when the latter is unable to do so.

Originally the supreme court consisted of five members, but owing to the fact that in the early days of statehood this court fell far behind its docket in the adjudication of cases, the legislature of 1911 created the supreme court commission. The commission consisted of six members, one from each supreme court district and one from the state at large, appointed by the supreme court for a term of two years; but the supreme court at its discretion could dissolve the commission.⁵⁴ In 1917 the commission was increased to nine members, appointed by the governor with the consent of the supreme court. The commission, under the rules and regulations of the

⁵³Art. VII, Sec. 3, Const.

⁵⁴S. L. 1911, Chap. 167.

supreme court, could aid in disposing of the cases coming before the court. Its opinion under the constitution could not be final, being subject to modification, adaptation, remandation or rejection by the supreme court. The legislature in 1919 refused to pass an appropriation for the supreme court commission, thus in effect abolishing it, but enlarged the supreme court to its present size of nine members. The 1923 legislature created a supreme court commission of fifteen members, who are to be appointed by the governor, subject to the approval of the supreme court. (S. L. 1923, Ch. 21).

To expedite matters, two divisions of the supreme court are created, each consisting of four justices, sitting with the chief justice, vice chief justice, or such other justices as may be appointed. Each division may, with the exception of constitutional cases, hear and determine cases coming before the supreme court. A majority of the court is necessary to an opinion; and in case any member of a division dissents, the case shall be determined by the whole court. Cases involving the constitutionality of a statute are assigned for oral argument or submitted to the entire court, and no former adjudication of the court shall be over-ruled without a conference of all the members of the supreme court.⁵⁵ Partially to handle the work done by the commission, the legislature provided for two supreme court referees, the incumbent to be appointed by the supreme court.

The supreme court possesses both original and appellate jurisdiction. Its original jurisdiction extends to a general supervision over inferior courts and commissions established by law.⁵⁶ The constitution gives the supreme court original jurisdiction to determine all appeals

⁵⁵S. L. 1919, Chap. 127.

⁵⁶R. L. 1910, Sec. 5236.

from the corporation commission. In passing upon an appeal, the supreme court may reverse, modify, or remand any ruling of the corporation commission, but the findings of the corporation commission are by the constitution deemed to be *prima facie* reasonable and correct. Likewise, appeals from the opinions of the secretary of state in a hearing on an initiated or referred petition are taken to the supreme court in original proceedings. The supreme court has been given further original jurisdiction in all cases involving the removal of the state capitol and state charitable and educational institutions, and in all actions to enjoin the enforcement or collection of an illegal tax or assessment.

The appellate jurisdiction of the supreme court extends to all cases in law and equity, and to such additional jurisdiction as may be conferred by law. In the exercise of its appellate jurisdiction it hears appeals from the district, superior and county courts.

In 1909 the legislature created the criminal court of appeals to have exclusive appellate jurisdiction in all criminal cases. This court consists of three judges having the same qualifications as justices of the supreme court and serving for a term of six years. The state is divided into three districts called the southern, northern and eastern districts. The political parties of each district nominate their candidates, who are voted upon by the state at large. The court is organized in the January following each biennial election, and the judge having the shortest term serves as presiding judge.^{56a}

The jurisdiction of the criminal court of appeals is limited to criminal cases appealed from the district, county or superior courts. All cases involving any constitutional questions are decided by the supreme court of the

^{56a}S. L. 1910, Chap. 18.

state. The criminal court of appeals may, however, exercise certain original jurisdiction such as the hearing on a petition for habeas corpus.

MUNICIPAL COURTS.

In addition to the system of state courts to try all violations of state law, courts are created to try all violations of municipal ordinances.⁵⁷ Under the home rule provision of the Oklahoma Constitution all cities of over two thousand inhabitants may frame their own form of government.⁵⁸ Those cities that have taken advantage of the home rule provision have established police courts to try all offenses against the city ordinances. Prior to 1915 a trial by jury was not necessary in the police court.⁵⁹ Although the constitution states that the right of trial by jury shall be and remain inviolable, petty offenses, such as the violation of municipal ordinances, were tried by summary proceedings before the constitution was adopted; and the constitution does not extend the right of trial by jury. However, the legislature in 1915⁶⁰ declared all actions for the violation of municipal ordinances to be criminal proceedings and to be governed by the laws relating to criminal procedure, which under Article II, Sec. 20 of the constitution, made a trial by jury mandatory for all violations of municipal ordinances.⁶¹ The legislature in 1917 modified the Act of 1915 by permitting all offenses against municipal ordinances which are punishable by fine to be tried without a jury⁶²; but in all other of-

⁵⁷R. L. 1910, Sec. 727.

⁵⁸Art. XVIII, Secs. 3a and 3b, Constitution.

⁵⁹In re Simmons, 4 Okla. Cr. 662, 112 Pac. 951.

⁶⁰S. L. 1915, Chap. 147.

⁶¹Ex Parte Johnson, 13 Okla. Cr. 30, 161 Pac. 1097.

⁶²S. L. 1917, Chap. 127.

fenses punishable by imprisonment, the defendant is entitled to a trial by jury in the justice of the peace court, and appeal is permitted from the municipal court to the county court and finally to the criminal court of appeals. The criminal court of appeals has recently decided that a municipal court is a constitutional court, and is bound by the constitutional provision that all prosecutions in the police court must be made upon a verified written complaint; and that section 650 R. L. 1910, which provides that a complaint brought by a policeman against any person need not be in writing, is in conflict with Art. II, Section 17, of the Bill of Rights. It has been further held that any offense against a municipal ordinance which is punishable by a fine greater than twenty dollars or imprisonment, cannot be enforced by summary proceedings, but the defendant is entitled to a trial by jury. No doubt the recent decision has greatly handicapped the power of the municipality to enforce its ordinances; and the legislature should restore to cities the power of summary enforcement that they enjoyed previous to the laws of 1915.

CRITICISMS AND RECOMMENDATIONS.

The judicial systems of the various states have long been subjected to searching criticism, both by members of the legal profession and by the public, upon the ground that the dispensing of justice is unduly delayed and that litigants are greatly hampered in obtaining their rights, by cumbersome procedure and by the inefficient functioning of the courts. Congestion of dockets is common, both in trial courts and in appellate bodies, opportunities for dilatory tactics are numerous and the enforcement of rights through judicial tribunals is ordinarily a matter of years. In 1919, the committee on special legislation of the Oklahoma Bar Association recognized the justice of

this criticism as applied to Oklahoma.⁶³ In discussing the cause of this breakdown of justice, the committee suggested the following factors as contributing to it: the lack of a responsible administrative head of the state judicial system, the impossibility of retaining experienced judges, due to short and precarious tenure and inadequate compensation; the vesting of the power to make rules of judicial procedure in the hands of the legislature, which is composed largely of laymen and therefore makes rules which often work very poorly yet cannot be changed without great difficulty. There is no doubt that all of these factors do contribute to the inefficiency with which our judicial system works, but it would seem that there are other factors which play a considerable part in bringing about that condition.

The committee believes that the judges of the inferior courts are responsible to a considerable degree for the unsatisfactory functioning of these courts, and places the blame for this situation upon the fact that they do not remain in office long enough to become experienced and efficient. All of this is true, but it must also be remembered that, upon the average, we do not place in the judgeship the men best fitted for the position. The remuneration of the county and district judges is far below that which a lawyer of ability and established practice can earn in private life. Popular election entails costly primary and general election campaigns. Many of the incidents of such campaigns are obnoxious to those possessing the highest type of judicial temperament, who, therefore, do not become candidates. Moreover, the average elector does not have available the information necessary to enable him to judge intelligently of the technical qualifications of the

⁶³Report of special Legislative Committee, Oklahoma State Bar Association 1919, pages 6 and 7.

various candidates, so is forced to rely upon the impression made by them in the campaign and upon the recommendations of members of the bar. Neither affords a certain and specific method of securing the choice of men who are especially fitted for the judicial office. No professional or educational qualifications, other than admission to the bar for varying periods, are prescribed for candidates, while justices of the peace in rural districts are not even required to come up to this low standard.

The committee cites the crystallization of cumbersome and inept rules of procedure into law by legislative enactment as one of the causes of delay in the administration of justice, and this is true; but it must also be remembered that trial judges have a considerable discretionary power which they could use to discourage dilatory tactics and to speed up the wheels of justice. But since judges must go before the people for re-election, they hesitate to arouse opposition from the bar which might make their return to office unlikely. As a result, practitioners have come to regard the use of frivolous dilatory motions, demurrers, and so forth, and the employment of other tactics in order to gain time as privileges to which they are entitled as of right. All this is very convenient for the trial lawyer, but adds very materially to the delay which litigants must encounter in securing their just rights. If judges were made more independent of the favor of the local bar in the matter of tenure of office, it is likely that this evil would be alleviated.

Another defect in the administration of justice through our court system arises, not from the machinery of the system, but from the character of relief afforded by it. With certain exceptions in special fields, our law is negative in character, rather than positive. It waits until some infraction of a legal right has occurred and then

awards damages or assesses a penalty for that infraction. There is no provision for "declaratory judgments" by which parties to a dispute as to their respective legal rights under a given situation may secure an authoritative adjudication of such rights by a court as a guide to future action. The result is that parties often find themselves in a situation in which they are in doubt as to the respective rights of each, yet must take the risk of acting in such a manner as to subject themselves to an action for damages. Such a situation presses the legal fiction that every man is presumed to know the law, to an illogical and harmful extreme, and introduces a baneful uncertainty into many business transactions. This was recognized by the above mentioned committee, which included in its recommendations for reform the adoption of the declaratory judgment.⁶⁴

The committee, in its report to the Bar Association, recommended a concrete plan for the complete reorganization of our judicial system in the form of a proposed constitutional amendment, based upon the principle of a state-wide unified court plan proposed by the American Judicature Society of Chicago.⁶⁵ The plan involves a somewhat radical reconstruction of the state judiciary, and so far has not received the official endorsement of the Bar Association; but since it is the result of careful study by some of the most eminent and able attorneys of the state, and, since, upon the whole, it seems to offer a practical and workable remedy for many of the present defects of our court system, it is worthy of thoughtful consideration by the people of the state. Briefly, the plan contemplates the consolidation of all of the present courts of the state into one general court of judicature.

⁶⁴Op. cit. page 23.

⁶⁵Op. cit. page 13, ff.

This court would be invested with the following functions: the judicial function, or the adjudication of controversies brought before the court in the form of cases, as at present; the administrative function, concerned with keeping efficient the administration of justice through the judicial function; and the rule-making function delegated to the court exclusively, rather than shared with the legislature as at present.

The judicial function of the general court of judicature would be exercised through three branches, designated respectively the supreme court, the district court and the county court. The supreme court would consist of one chief justice and twelve associate justices. The chief justice would be the administrative head of the general court of judicature, and would not devote much of his time to purely judicial duties, although he would be allowed to participate in such duties at any time. The supreme court would exercise all of the jurisdiction, original and appellate, now vested in the supreme court and the criminal court of appeals. It would be divided into at least four sections, consisting of from three to five justices, for the purpose of transacting its business. At least one of the sections must be a "criminal division," and justices would be allowed to sit on more than one division. The concurrence of three justices would be sufficient for the decision of any question, by a division, and ordinarily, all questions before the supreme court would be determined by the division to which they were assigned. In cases necessarily involving the validity of an act of the legislature, or the interpretation of the Constitution of the United States or of Oklahoma or of an act of Congress or treaty of the United States, or where a proposed decision is claimed to be contrary to a former decision of the court or of one of its sections, the case

would be considered and decided by the entire court. The chief justice would also have the right to order any case to be so heard. Members of the supreme court would be required to be qualified electors, thirty-one years of age, residents of the state for five years, and for ten years preceding selection to have been either in active practice at the bar or judges of a court of general jurisdiction. The chief justice would be elected by popular vote for a term of four years at each gubernatorial election; associate justices would be chosen by the chief justice for a term of eight years. At each gubernatorial election, the names of those justices whose terms expired prior to the next such election would be placed before the people upon a non-partisan ballot for an expression of opinion as to whether or not they should be continued in office. Those who received a favorable majority would be deemed elected for another term; in case the vote as to any justice proved unfavorable, his office would become vacant at the expiration of his term; and the chief justice would appoint his successor. In addition to being subject to impeachment as at present, justices might be removed by a two-thirds vote of both houses of the legislature, after being given notice and an opportunity to be heard. Temporary justices might be appointed by the chief justice when necessary. The salary of the chief justice would be fixed at \$8,000 per annum, while associate justices would be paid \$7,500. The salaries might be increased by the legislature, but not decreased.

The district court would have substantially the same jurisdiction as that now exercised by the district courts of the state. However, its organization would be materially different from that now obtaining. The state would be divided into six judicial districts, in each of which there would be several district judges, the whole number be-

ing the same as at the present time. At the head of each district would be a presiding judge, selected by the chief justice. This presiding judge would have power to prepare the calendar of cases for trial in his division, to apportion the cases among different calendars and judges, and so forth, and to exercise a general supervisory influence over the work of the district court within his division. Provision is made for quarterly meetings of the judges in each division, and for annual meetings of all the district judges of the state for the purpose of discussing the administration of justice and suggesting such improvements as may seem desirable to the higher authorities. District judges would be nominated and elected by the people as at present, but from the new districts. Their term of office would be six years. Compensation would remain at the present sum, except that each judge would receive actual expenses while outside the county of his residence on official duty, and the presiding judges would receive an additional one thousand dollars per annum.

The county court would exercise substantially the same jurisdiction as at present. In each county there would be a county judge elected for a term of four years by popular vote in the same manner as is now used. Associate justices, one for each thirty thousand population in excess of the first thirty thousand in each county might be appointed, when ordered, by the chief justice with the consent of the presiding judge of county courts. This last officer would be appointed by the chief justice and vested with a general power of inspection over the work of the county court in the various counties. Provision is made for annual meetings of the county court judges similar to those prescribed for district judges. The compensation of county judges, until increased by the legislature, remains the same as at present.

The present justice of the peace courts would be abolished and would be replaced by district magistrates in each county attached to the county court. The number of magistrates in each county would be fixed by the presiding judge of county courts with the concurrence of the chief justice. The number of districts into which each county would be divided would be fixed by the presiding judge, but the actual laying out of districts would be done by the county commissioners subject to the approval of the county judge, and the magistrates would be appointed by the county commissioners upon nominations made by the county judge. Their terms would expire with that of the county judge. Their compensation would be fixed by the board of judicial regents, hereinafter mentioned, at not more than \$2,000.00 per annum, and their jurisdiction would include such part of the jurisdiction of the county court as might be assigned to them by the judicial council. The district magistrates would be under the immediate supervision of the county judge of each county, and that official would have authority at any time before judgment to transfer a case from a district magistrate to the county judge or associate county judge.

The administrative supervision of the judicial system of the state would be vested in the chief justice and in the board of judicial regents, consisting of the chief justice, one associate justice of the supreme court chosen by that body, the presiding judges of the six judicial districts and the presiding judge of the county court. The chief justice would be vested with the general supervision of the entire judicial system. The board of judicial regents would have power to make rules for the internal administration of the court system, as for example, to regulate the number of judges in each division of the

district court and to fix the times and places for holding sessions of the district and the county courts. The making of rules of judicial procedure would be assigned to the judicial council, formed by adding to the membership of the board of judicial regents all of the justices of the supreme court.

The present offices of clerk of the supreme court and of court clerks in the several counties would be consolidated into the office of clerk of the general court of judicature. The incumbent of this office would be appointed by the judicial council and would hold office at its pleasure. Each county would have a deputy clerk, elected by the people as is the court clerk at present. In addition, the district magistrates in each county would be ex officio deputy clerks, and assistant deputies might be appointed in each county as deputy court clerks are now appointed.

Provision is made for an annual meeting of all of the membership of the general court of judicature to consider the working of the judicial system, the effect of the rules of procedure, and such improvements as may appear desirable in the interest of better administration of justice.

The program involved in this proposal is extremely interesting, and, upon the whole, seems likely, if adopted, to result in a great improvement in our judicial system. The unification of our present headless aggregation of courts into one system, with provision for an adequate supervision of the lower courts, thus giving opportunity to eliminate inefficient practices, should result in appreciably improving the general quality of judicial action. The giving of the rule-making authority to the courts would undoubtedly result in better and more flexible procedure. The increased tenure and better pay accorded to the appellate judges should result in attracting lawyers of the

highest type to these positions, and their choice to these places is more likely to ensue from appointment by the chief justice than from popular election. The provision for popular election of the chief justice is from some viewpoints undesirable. The qualities necessary to an efficient holder of that position are legal knowledge and administrative ability, neither of which is likely to be a controlling factor in the outcome of a political campaign. However, the only alternatives to popular election are executive appointment, selection by the legislature, or choice by the judiciary. The first two might be undesirable as tending to destroy the independence of the courts, although executive appointment has not had that effect upon the Federal judiciary, while the last would undoubtedly be condemned by public sentiment as tending to create a judicial oligarchy. However, if the chief justice is to be an elective officer, it would seem that he should be elected upon a non-partisan ballot, as there is no reason whatever for making his choice dependent upon party affiliation. The provision for a popular referendum upon the reappointment of justices of the supreme court seems good. It obviates the demagogic criticism of judicial irresponsibility that is always raised at any proposal to remove judges from the list of elective officials, while the fact that the question of reappointment is to be submitted upon a non-partisan ballot, and that no opposing candidate may appear upon the ballot ensures that no judge will be retired by this method unless there is a widespread and well-founded demand for his removal. Campaign expenditures in this sort of an election will be very light. The division of the supreme court into four or more sections for the consideration of ordinary cases would relieve the present congested condition of the docket, and

materially reduce the time required to secure the final adjudication of cases.

It does not seem that the committee has been so fortunate in its proposals for the betterment of courts of the first instance. While the provision for administrative control of these courts will undoubtedly greatly improve their operation, it must be remembered that most of the responsibility for the way in which these courts function rests upon the local judges. It has been in lowering the caliber of the judges in our trial courts that inadequate salaries, insecurity of tenure and popular election have had their worst results, yet the proposal retains all of these undesirable features. It would seem wise to provide for a reasonable increase in salaries, and to vest the choice of these judges in the board of judicial regents, subject to popular approval of reappointment as in the case of justices of the supreme court. The same criticism applies to the proposed method of choosing deputy clerks. They might well be chosen by the county judge.

The district magistrates would undoubtedly be an improvement over the present justices of the peace, but it is to be regretted that the system proposes to retain the trial *de novo* upon matters of fact on appeal from their decisions. The result of allowing such trials is to make the first verdict as to facts binding only at the option of the defeated party. If a court is competent to hear and decide upon facts at all, it is surely competent to have its decision as to those facts accepted on appeal, and trials *de novo* in the upper court simply add to the delay in the administration of justice.

In general principle, the proposed reorganization seems sound and should be used as the basis for the reorganization of our court system which must some day be made in the interest of justice.

CHAPTER VI.

THE CORPORATION COMMISSION.

Before beginning upon the consideration of the regulation of public utilities in Oklahoma, a word concerning the history of utility regulation in general will not be inappropriate. In the early development of public utilities, both national and state governments maintained a policy of non-interference. By subsidies in the form of land grants, bonuses, valuable franchises, and tax exemptions, they offered every possible inducement to the young and growing utility. In the performance of their public duties, the public service corporations were limited only by their common law obligations; namely, (a) to charge only a reasonable rate, (b) to provide safe and adequate facilities, (c) to serve all who applied, (d) to engage in no discrimination. It soon became apparent, however, that mere court control utterly failed in the enforcement of the common law duty of public service corporations, and as a result a reaction against judicial regulation set in. Under a burden of unjust discrimination, inadequate service, extortionate rates, and a vicious system of rebates, one state after another, as well as the national government, adopted some method of supervision.

Massachusetts led the way in 1869 with the creation of the Railway Commission, and the national government followed in 1887 with the organization of the Interstate Commerce Commission. These early commissions possessed only supervisory and recommendatory powers. They heard complaints, inspected the physical and financial management of the railroads, and made such recommendations as they deemed necessary; and it was not until the beginning of the present century that public utility

commissions were vested with the power of rate making and mandatory regulation.

In Oklahoma during the territorial days, no commission existed for the regulation of the rates and the services of public service corporations. The laws of the territory provided that common carriers should be regulated by the laws pertaining to common carriers, which were simply a reiteration of their common law duty as to reasonable rates and adequate service¹; and in case the common carrier failed to perform its duties or imposed an unreasonable rate, the individual thereby injured could in a private suit against the carrier recover damages to the extent of his injury². This remedy in the last analysis proved to be a very ineffective and empty one. During the days of the territory no attempt was made at a scientific regulation of rates. If a rate appeared unreasonably high, the only remedy was an appeal to the courts for an injunction to prevent its enforcement, or the legislature could by law establish a rate. While the power of the legislature to establish a rate was unquestionable, yet no adequate machinery existed by which the reasonableness of a rate or regulation of service could be absolutely and scientifically determined. Owing to the variety of elements that enter into rate-making, the legislature was unable satisfactorily to handle the matter. An appeal to the courts was not a satisfactory solution of the question. When a case arose in which it became necessary to determine the reasonableness of a rate, either to protect the public against unreasonable charges or to protect the public service corporation against rates so low as to amount to confiscation of property, the courts could enjoin the un-

¹Sec. 1035 Laws 1893.

²Sec. 1036 Laws 1893.

reasonable rate. But here the power of the courts ceased, as they did not possess the power to fix rates for the future, for the well-grounded reason that rate fixing is a legislative function, and vesting the courts of the land with such duties is a violation of our system of division of powers³.

In place of this unsatisfactory system of legislative and judicial control, Oklahoma, in common with other states in the Union, provided a commission with mandatory powers of rate-making and regulation. State commissions have been given, both as to equipment and rate-making, such mandatory powers that administrative regulation has been substituted for legislative control. Vesting a commission with such vital functions as rate-making and mandatory regulation was a revolution in the matter of the delegation of legislative authority, but in view of the stupendous growth of public service corporations, their wealth and influence, and their close connection with the public welfare, such a step was not only wise but highly necessary and expedient.

It is the purpose of this chapter to discuss:

- (a) The organization of the commission.
- (b) The jurisdiction of the commission.
- (c) Appeals from orders of the commission.
- (d) Criticisms and recommendations.

THE ORGANIZATION OF THE COMMISSION

The corporation commission of Oklahoma is a body created by the constitution, consisting of three members elected by the people and serving for six years. Their tenure of office is so arranged that the term of one member expires every two years. In case of a vacancy, the governor appoints a member of the commission to serve until the next general election, when a successor is elected

³See note, 8 L. R. A. (ns) 529 and cases there cited.

to fill out any unexpired term⁴. The constitution places certain qualifications upon the members of the commission, among them being that each must be a resident of the state two years before election, a qualified voter under the constitution, and be thirty years of age. A member of the commission shall not, directly or indirectly, be interested in any public service utility over which the commission has jurisdiction, and if he should voluntarily become so his office becomes vacant. Should he become interested other than voluntarily, a reasonable time is given him to dispose of his interest. If he does not do so his office becomes vacant⁵. The commission is organized by the election of one of its own members as chairman and the appointment of a secretary. A majority of the commission constitutes a quorum, and the concurrence of a majority of the commission is necessary to decide any question.⁶ Each commissioner receives a salary of four thousand dollars per annum⁷, while that of the secretary is fixed by the legislature⁸.

Under Article IX, Sec. 18, of the Oklahoma Constitution, the corporation commission is given the power of supervising, regulating, and controlling transportation and transmission lines in all matters relating to the performance of their public duties, their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies; and to that end the commission from time to time prescribes rates, charges, classification of traffic, and requires companies to establish and maintain such public service, facilities, and conven-

⁴Art. IX, Sec. 15, Const. of Okla.

⁵Art. IX, Sec. 16, Const. of Okla.

⁶Art. IX, Sec. 18a, Const. of Okla.

⁷Sec. 15, Schedule to the Const. of Okla.

⁸S. L. 1919, Ch. 211 fixes the salary of the secretary at \$2,000 per annum.

iences as may be reasonable and just. The term transportation lines is defined in the constitution as including railroads, street railroads, canals, steamboat lines, freight car companies (or associations), express companies, sleeping car companies, car corporations, or companies in any way engaged in such business as a common carrier over a route acquired wholly or in part under the right of eminent domain⁹. The term transmission line is defined as including telegraph and telephone lines¹⁰. It was at first considered that the jurisdiction extended to all public service corporations. This view was soon dispelled by the courts which held that the constitution did not give the corporation commission general jurisdiction over all public service companies¹¹. Under the constitution public service corporations include all persons, partnerships, and corporations authorized to exercise the right of eminent domain or to use any right of way or public highway in a manner not permitted to the general public². The jurisdiction of the commission being a delegation of legislative power, it is given a strict construction and is limited to those utilities expressly mentioned within its provisions. Thus all companies exercising the right of eminent domain were excluded from the jurisdiction of the commission save transmission and transportation companies, which for all practical purposes included railroads, street railroads, telephone and telegraph lines; and that large class of public service corporations known as municipal utilities were excluded from the jurisdiction of the commission. However, the jurisdiction thus given the commission by the constitution is by no means exclusive, but the legislature

⁹Art. IX, Sec. 34, Const. of Okla.

¹⁰Art. IX, Sec. 34, Const. of Okla.

¹¹Shawnee Gas and Electric Company v. Corporation Commission.
35 Okla. 454, 130 Pac. 127.

¹²Art. IX, Sec. 34, Const. of Okla.

may by law bestow upon the commission additional powers and duties¹³ covering a wide range of action. The commission may be vested with power to prescribe rates and charges to be observed in the conduct of any business where the state in the first instance has the power to prescribe rates and charges¹⁴. By virtue of the foregoing provision the power of the commission can be made coextensive with the police power of the state.

This raises the fundamental question: to what extent may the state proceed in the original matter of regulation of business? It is generally conceded that actual or virtual monopoly subjects the business to regulation by the state. Every business granted the right of eminent domain is given a privilege denied the public generally. In accepting the privilege, those engaged in such business agree to devote it to a public use to the extent that the public has an interest in its operation. But the regulatory powers of the state need not stop with those businesses that are monopolistic or possess the right of eminent domain or require a franchise for their operation, but may properly extend to any employment which by conditions, location, or economic importance gives those who conduct it virtual control over the public in a matter vital to their welfare. The test whether or not a business is public should not be whether it requires a franchise for its operation or possesses the right of eminent domain; but whether it is public or private should be determined by the relation of the public with respect to its operation. A striking example is the case of ice plants. Although they are not inherently monopolistic and are required to obtain no franchise, yet their rates and charges so vitally affect the public interest that they are now con-

¹³Art. IX, Sec. 19, Const. of Okla.

¹⁴Ibid.

sidered a public business and subject to state supervision. This bears upon the position taken by the corporation commission, as will be pointed out later.

The commission may also be vested with power in connection with the assessment of property of corporations, or appraisements of their franchises for taxation, or with the investigation of the subject of taxation generally.¹⁵ The power given the legislature to extend the jurisdiction of the commission is neither mandatory nor exclusive, but the legislature may in its discretion grant regulatory powers to commissions other than the corporation commission¹⁶.

From the foregoing it is obvious that the potential powers of the commission are extensive. The Oklahoma supreme court, in the case of the St. Louis and San Francisco Railroad Company versus Williams, et al.¹⁷ declared: "The Corporation Commission, by virtue of the provisions of Article IX of the Constitution, is invested with extraordinary powers, being authorized to exercise not only legislative, but also executive, administrative, and judicial powers."

The first legislature extended the jurisdiction of the commission so as to include control and supervision over the physical connection and the switching facilities of the railroads at all junction points and incorporated towns where one or more railroads "enter or are included."¹⁸ By force of this provision the commission is vested with the power to hear all complaints with reference to the switching and transfer facilities of the railroad companies, and may, upon investigation or upon its own mo-

¹⁵Art. IX, Sec. 19, Const. of Okla.

¹⁶Insurance Co. of North America v. Welch; 49 Okla. 620; 154 Pac. 48.

¹⁷25 Okla. 662; 107 Pac. 428.

¹⁸Laws 1907-8, Ch. 18, p. 226.

tion , issue orders requiring them to maintain such physical connections—including switching facilities and union depots—as the public interest may require. However, such order of the commission must be predicated upon a gift to the railroad of the right-of-way, or its sale at such reasonable cost as the commission may deem proper. The cost of the construction and maintenance of such facilities shall be borne by the respective companies as they may agree, or, in case of disagreement, as the commission may direct. In addition to the power of regulating and controlling the conduct of the railroad companies in relation to their public duties, the commission, by virtue of the foregoing legislation, is vested with the additional power to regulate and control the public functions of the railroads in their relations to each other.

The jurisdiction of the commission has been further extended by what is commonly called the “Anti-Trust Law.”¹⁹ The purpose of this act, as set forth in its title, is “to define a trust, monopoly, unlawful combination in restraint of trade, to provide civil and criminal penalties and punishment for violation thereof and damages thereby caused; to regulate such trusts and monopolies; to promote free competition for all classes of business.” (S. L. 1907-8, p. 750) Under this law every act, agreement, contract, or combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce within the state, which is against public policy, is declared illegal.²⁰ Under Section 13 of this act, whenever any business, because of its extent and circumstances, becomes a virtual monopoly by violation of the preceding section and is placed in such a position that its service and products are

¹⁹R. L. 1910, Ch. 79, as amended by S. L. 1913, Ch. 114.

²⁰R. L. 1910, Sec. 8220.

a public necessity to the extent that the public is vitally affected by its rates and charges, such business becomes a public business and is subject to the jurisdiction of the corporation commission in respect to its rates, charges, and conditions of service.²¹ The exact limitation of regulation by the corporation commission under the scope of this act is not well defined, although several cases have arisen for adjudication. The first question that arose was: Were the public utilities such as electric, water, and gas companies, excluded from Article IX, Section 18 of the constitution, included under the operation of the act? No doubt it was the intention of the legislature, as set forth in Section 13 of the act, to make a distinction between a natural and a virtual monopoly, and also between a business affected with a public interest because of its very nature, such as water, electric, and gas companies, and a business private in nature but which has become public in its operation because of circumstances.

The legislature has differentiated public utilities where competition must necessarily be eliminated, from businesses which admit of competition but in which, because of certain circumstances, combinations, or conspiracies, competition has been eliminated. Businesses within the latter class are those falling within the purview of the act. Such has been the ruling of the Oklahoma supreme court in a case on which it was held that gas companies were excluded from the operation of the anti-trust laws²². What industries, then, come within the act? Upon several occasions the power of the commission to fix the price for ginning cotton has been before the supreme court for review. In each case the appeal was dismissed for

²¹R. L. 1910, Sec. 8235.

²²Shawnee Gas and Electric Co. v. Corporation Com., 35 Okla. 454, 130 Pac. 127.

lack of jurisdiction, on the grounds that Article IX, Sec. 20, of the constitution, which granted jurisdiction to the supreme court of review an order of the corporation commission, did not include an appeal from an order of the commission under the anti-trust law. Hence the extent of the power of the commission under this act was not directly passed upon²³. But finally, in the case of the Oklahoma Gin Company versus the State²⁴, which was an appeal from an order of the commission imposing a penalty for the violation of its order, the jurisdiction of the commission under the anti-trust laws was directly assailed as invalid upon the grounds that such power was an unwarranted delegation of legislative authority and was therefore a violation of Section 1, Article IV, of the constitution, providing for the separation of governmental powers. The court held, however, that such power was properly delegated, arguing that the power of the commission to declare a private business to be monopolistic in character and subject to regulation, is a delegation of legislative authority; but inasmuch as such power is delegated to the commission by other parts of the constitution, such additional delegation by the legislature under the anti-trust laws is not a violation of the separation of powers.

In 1913 the commission entered an order declaring the Oklahoma Operating Company a monopoly and its business of laundering a public one, and forbade an increase in laundry rates above those in effect at the time, without the permission of the corporation commission. In 1918, the rates of 1913 being non-compensatory, the operating company increased its rates in violation of the commission's order. In an action brought against

²³Harris-Irby Cotton Co. v. State et al., 31 Okla. 603, 122 Pac. 163.

²⁴63 Okla. 10, 158 Pac. 629

the Oklahoma Operating Company for violation of the order of the commission, an appeal was taken to the Supreme Court of the United States. It was there held that Section 8235 of the Revised Laws of Oklahoma, 1910, which declares a business that "by reason of its nature, extent, or the existence of a virtual monopoly is such that the public must use the same," to be affected with public interest, and which subjects such business to control by the corporation commission, was invalid. Such invalidity was not due to lack of jurisdiction on the part of the commission or to the fact that the powers bestowed upon the commission constituted a usurpation of legislative authority; but to the reason that no appeal from the order of the corporation commission was provided for except in contempt proceedings for violation of its orders. Since the State Supreme Court has no power under this section to review an appeal from the order of the commission except by way of defense to contempt proceedings instituted for violation of the act, the order of the commission in fact amounted to a denial of due process of law.²⁵ This defect in the Anti-Trust Laws was, however, corrected by legislation which provided that all appeals from the orders of the commission under Section 8235 should be governed by the rules applicable to appeals in the case of transportation and transmission companies, as contained in Article IX, Section 20 of the Constitution of Oklahoma²⁶. Thus the original power of the commission under the Anti-Trust Laws is unimpaired.

In the opinion of the commission, the Anti-Trust Laws were designed for the protection of the consumer, and

²⁵Okla. Operating Co. v. State, 252 U. S. 331; Okla. Gin Co. v. State 252 U. S. 339.

²⁶S. L. Okla. 1919, Ch. 52.

not for the protection of the producer.²⁷ However, it is important to note in this connection that in 1913 the commission assumed under the Anti-Trust Laws jurisdiction over cotton gins, which obviously operate to the interest of the producer. In their annual report of 1919, the commission urged the Legislature to extend their jurisdiction to include the regulation of ice plants and threshing utilities, as complaints against these utilities were constantly being filed²⁸. The legislature, however, refused to act, but in the summer of 1921, the corporation commission assumed jurisdiction over ice plants and attempted to regulate the price of ice in various cities under power conferred by Section 8235 of the Revised Laws of 1910; and their jurisdiction in this direction is now before the Supreme Court.

The commission having therefore exercised under the Anti-Trust Laws, jurisdiction over cotton gins, laundries, and ice plants, where will its jurisdiction stop? As pointed out, the exact limitation is not well defined, but any business that the state in its sovereign capacity may regulate may come within the jurisdiction of the commission. Before the commission may exercise jurisdiction under the Anti-Trust Laws, however, a monopoly must in fact exist. If we can argue by analogy from the case of Federal Trade Commission v. Gratz,²⁹ in which it was held that "It is for the courts, not the Commission, ultimately to determine, as mother of law", what the words "unfair method of competition" include, we may say that whether or not a business is a monopoly is ultimately determined by the courts.

The powers of the corporation commission were

²⁷12th Annual Report, Oklahoma Corporation Commission, p. 1.

²⁸Ibid, p. 1.

²⁹253 U. S. 421.

greatly extended by the laws of 1913, which gave the commission general supervision over what are commonly called municipal utilities³⁰. These utilities include all corporations operating directly or indirectly for public use.

(a) For the conveyance of gas by pipe line,

(b) For the production, transmission, delivery, or furnishing of heat or light with gas.

(c) For the production, transportation, delivery, or furnishing of electric current for light, heat, or power.

(d) For the transportation or delivery of water for domestic purposes or for power.

There are excluded from the operation of the act all utilities municipally owned or operated. Over the utilities above mentioned, the power of the commission is complete; that body is vested with powers of rate fixing and of making regulations affecting their service, operation, and management. To that end it is given full visitatorial and inquisitorial powers, together with such incidental and implied powers as may be necessary to carry out the purpose of the act. The powers thus given apply to utilities within or without a city, even to those cities that have their own charters.³¹

Under the laws of the Territory of Oklahoma, the cities were granted the power through their city councils to make contracts in respect to the erection of gas and electric plants, and they could grant to any person or corporation the use of their streets and alleys for supplying such service.³² However, no franchise thus granted could be exclusive or granted for a period longer than twenty-one years; and all such grants were subject to all

³⁰S. L. Okla. 1913, Ch. 93.

³¹Bartlesville v. Corporation Commission, 199 Pac. 396.

³²Wilson's Revised and Annotated Statutes of 1903, Sec. 398..

reasonable regulation by ordinance as to the use of streets and the price to be paid for the service rendered. The same privilege existed after statehood,³³ with the exception that the franchise could be granted for twenty-five years, but no franchise could be granted, extended, or renewed without the approval of a majority of the qualified electors voting at a special or a general election.³⁴ While the power of regulation is given to the commission, yet the granting of a franchise is in the hands of the city, there being reserved to the state "control and regulation" of the use and enjoyment of the franchise.³⁵ The city, as a condition precedent to the granting of a franchise, may stipulate therein the maximum rate to be charged; but such rate is subject to the subsequent modification of the corporation commission. The question of changing the terms of a franchise arose in the case of *Pawhuska v. Pawhuska Oil and Gas Company*.³⁶ By the terms of the franchise to the gas company in 1909, it was provided that "said grantee shall furnish natural gas to the cities at a reasonable rate, which shall in no case exceed fifteen cents per thousand cubic feet of gas." Acting under the authority conferred by the laws of 1913, the corporation commission increased the rates from fifteen to twenty cents per thousand cubic feet. On appeal from the ruling of the corporation commission, the supreme court of Oklahoma held that rate-making was a sovereign function and that the state in its discretion could delegate such power to a city or withhold it entirely. Thus, whatever power of

³³Art. XVIII, Sec. 7, Const. of Okla.

³⁴Art. XVIII, Sec. 5b, Okla. Const.

³⁵Art. XVIII, Sec. 7, Okla. Const.

³⁶64 Okla. 214, 166 Pac. 1058; Same case affirmed, 250 U. S. 394, 63 L. Ed. 1054.

regulation had been delegated to the city by Section 593, R. L. 1910, such power had been repealed by the laws of 1913, conferring jurisdiction on the Commission. "The authority granted to the City of Pawhuska * * * was the power delegated to it by the State, and said city only had such right until such time as the State saw fit to exercise its paramount authority * * *"

The decision was reaffirmed in the case of the City of Durant et al v. Consumers' Light and Power Company³⁷ and recently in the City of Bartlesville v. Corporation Commission.³⁸ In the latter case the order of the commission violated a provision of the charter of the City of Bartlesville. By Art. XI, Sec. 6 of the home rule charter adopted by Bartlesville under Article XVIII, Sec. 3 of a and b of the Oklahoma constitution, it was provided that the city reserved unto itself the regulation of rates and services of gas, electric, street railways, and telephone companies operating within the city. By Sec. 539, R. L. Okla. 1910, whenever a provision of a city charter concerning a municipal matter is in conflict with the laws of the State, the provision of the charter shall prevail. Notwithstanding the foregoing provision, the rate fixed by the commission was upheld, on the theory that rate-making was more than purely a municipal concern; it was a matter of supreme legislative interest and hence superior to the interest of the chartered city. This case touches a vital question in the matter of the regulation of public utilities within a city.

The effect of these decisions is to leave the cities of Oklahoma in this position: while the cities have the power to grant franchises for the use of their streets and alleys for a period not exceeding twenty-five years, the regula-

³⁷177 Pac. 361.

³⁸199 Pac. 396.

tion of rates and services, which forms the integral part of a franchise, is left to the corporation commission. This is true even if the franchise was granted before statehood.³⁹

There has been considerable opposition to the regulation by the corporation commission of public utilities which operate under municipal franchises. During the eighth session of the Oklahoma Legislature a bill was introduced which would have limited the powers of the commission over such utilities, but the bill failed of passage. As the question of control over municipal utilities is still a vital one, it may be worth while at this point to consider the arguments both for and against lodging such control in the corporation commission.

Those who advocate bestowing upon the city the right to regulate, by franchise or otherwise, the rates and conditions of service of the public utilities operating within its borders, offer the following arguments in support of their position:

(a) The city which grants the franchise can and should embody therein effective regulatory provisions.

(b) As circumstances vary from city to city, the local officials who are in touch with the situation can regulate more efficiently than can a state commission.

(c) Since the corporation commission acts as a court, hearing evidence on both sides and rendering its decisions according to such evidence, instead of as a defending body concerned to secure the interests of the public, regulation by this commission is very expensive to the city. Public utility corporations provide large corps of experts to present their side of the case; and if the other side is to be presented with equal efficiency, much of the

³⁹City of Sapulpa v. Oklahoma Natural Gas. Co. 192 Pac. 224.

city's money must be spent in securing other experts. Moreover, even if the city is able to spend the money, it may not secure specialists equal to those employed by the corporation.

(d) Municipal regulation of public utilities is a logical application of the principle of home rule.

(e) Instances may be cited to show that regulation of utilities by the city works better in practice than regulation by a state commission.

These arguments are answered in the following manner by those who believe in state regulation of public utilities:

(a) Franchise provisions are valueless unless they are enforced by a thoroughly informed body which is constantly at work. Few cities can afford to pay for this type of supervision and enforcement, so that for the most part regulation by franchise is ineffective.

(b) City officials may know local conditions, but they cannot know all that is necessary to a just regulation of rates and service. Technical information as to methods and costs of operation, correct standards of valuation, depreciation, fixed charges, etc., can be obtained only through a staff of competent engineers, accountants, auditors, and other specialists who are intimately acquainted with the operation of public utilities.

(c) Although it is a costly matter for the city to present its case adequately before the corporation commission, the cost of doing so is much less than that of maintaining an adequate regulatory body equipped with an expert staff. The cost to the city should be greatly lessened by the establishing within the corporation commission of a separate investigational division, with a staff

competent in every way to determine the relevant facts in regard to any corporation.

(d) The question of municipal home rule is not relevant to the problem of regulating a corporation whose operations extend beyond the borders of the city.

(e) In spite of individual instances to the contrary, state regulation works better than municipal regulation, as a general rule, for reasons which have been indicated in the foregoing paragraphs.

It seems that those who believe in state regulation have the better of the argument. Continual, consistent, intelligent supervision of corporations which carry on any part of their operations, or which secure their supplies outside the boundaries of the city; adequate information, depending to a large degree upon the power to summon witnesses, examine books and records, and determine actual costs; proper legislation for the protection of those who hold stocks and bonds, are all essential parts of utility regulation; and all are either beyond the financial reach of the average city, or are matters over which the state rather than the city has jurisdiction. A state corporation commission with an adequate investigating staff, and a corps of lawyers to defend the public interests, as a division entirely separated from the divisions which make the final decisions and rules, should be a far more effective protection to the public against greedy corporations and to the corporations against un-intelligent and prejudiced control, than any tribunal which a city could establish.

The legislature in 1915 declared cotton gins to be public utilities, and their business of ginning cotton a public one and subject to regulation as to rates, charges and conditions of service, by the corporation commission in the

same manner as the regulation of transportation and transmission companies.⁴⁰ The law further provided that no person shall operate a gin until a license for that purpose has first been secured from the corporation commission. Such license is not a matter of right, but the commission may exercise its discretion as to the necessity of a gin in the community, and as to the reliability and qualifications of the applicants. But should a petition signed by fifty producers of cotton in the immediate vicinity be filed with the commission, that body must issue the license. Under the power here given, the commission is not confined merely to fixing rates charged for the ginning of cotton, but may regulate these facilities incident to the ginning of cotton, such as the rates to be charged for bagging and ties furnished by cotton gin operators in the ginning of cotton.⁴¹

A law of 1923 (S. L. ch. 113) gives the corporation commission jurisdiction over motor carriers doing an inter-city business or operating between fixed terminal points or over a regular route, and not operating exclusively within the limits of an incorporated city or town. The commission is given the power "to fix or approve the maximum, or maximum and minimum rates, fares, charges, classifications, and rules and regulations pertaining to each motor carrier; to prescribe a uniform system and classification of accounts * * * All control, power and authority over railroads and railroad companies now vested in the Corporation Commission is hereby specifically extended to include such motor carriers."

The public utilities having been placed under the jurisdiction of the corporation commission, the regulatory powers of the commission are co-extensive with the po-

⁴⁰S. L. 1915, Ch. 176.

⁴¹Sims v. State, 196 Pac. 133.

lice powers of the state. The commission may make all valid and lawful orders prescribing rates and conditions of service that the state originally could have made in the exercise of the police powers.⁴² The orders of the commission are the same as laws passed by the legislature, and the utility is subject to the orders as if they had been made part of the contract.

A statute requiring all the gas supply to be metered is a valid exercise of the police power as a means of conserving our natural resources, and may be enforced, the terms of the franchise notwithstanding.⁴³ As a method of regulation, the commission has power to discount gas bills for insufficient service, for the reason that the mere furnishing of gas is not the only service of a gas company, since efficient service includes adequate pressure at all times, and the failure to transport gas with sufficient pressure is a failure to render service.⁴⁴

The most far-reaching power of the commission, and the one that most concerns the people of the state, is its rate-making function. The constitution provides that rates, charges, and regulations must be just and reasonable; and what constitutes a reasonable rate touches the crux of the whole utility question, as adequate service and rates are interdependent. What is a reasonable rate does not admit of exact definition. Because of the countless elements that enter into rate-making, each case must be determined in the light of its own circumstances; and the courts have for good reasons declined to make a definite and absolute finding of a reasonable rate.

The commission, before undertaking to fix rates, must

⁴²Okla. Natural Gas Co. v. State et al, 78 Okla. 5, 188 Pac. 338

⁴³Pawhuska v. Pawhuska Oil & Gas Co. 148 Pac. 118, 47 Okla. 342.

⁴⁴Okla. Natural Gas Co. v. State, 78 Okla. 5; 188 Pac. 338; affirmed in U. S. Courts, advanced Sheets U. S. S. C. Apr. 15, 1922, p. 331.

first ascertain the value of the plant and base the reasonable rate thereon.⁴⁵ This general rule, however, seems to be somewhat limited in case of temporary rates. If it appears that the rate fixed by the order of the commission is somewhat permanent and is established as a reasonable return upon the company's investment, all things considered, then the value of the plant must first be determined. If on the other hand the present income of the public service corporation is insufficient to pay the operating expenses, the commission may, pending the determination of the value of the plant, establish a temporary rate which need not be based on the value of the property.⁴⁶ The courts have generally sanctioned temporary rates to meet an emergency, or to determine by experiment or trial what rates would be just. If this power were denied, and the commission were forbidden to prescribe rates until it had made a complete inventory and valuation, it could grant little relief at a moment when war and post-war re-adjustment had created unstable conditions. In the case of the Muskogee Gas & Electric Company v. State, cited above, the state supreme court held:

"Neither is the method of making the rates by the Corporation Commission limited to any particular theory or method, nor is a valuation a necessary pre-requisite to prescribing rates." This particular statement would seem to be limited to temporary rates, unless the court intends to reverse itself in the more recent case of

⁴⁵Okla. City et al v. Corporation Commission 80 Okla. 194, 195 Pac. 498, 47 Okla. 342.

⁴⁶Bartlesville v. Corporation Commission, 199 Pac. 396; Muskogee Gas & Electric Co. v. State, 81 Okla. 176, 186 Pac. 730

Oklahoma City et al v. Corporation Commission⁴⁷ where it held:

“The first essential in fixing rates is to determine the value of the property and then determine whether the rate is reasonable * * * but it is always essential that the value of the property be determined.’ Again the court says, “If this is a rate, the Commission failed to find the value of the property, **which is absolutely essential and necessary before the Commission can fix a rate.**”

Admitting that a reasonable rate must be based upon the fair value of the property of a public service corporation at the time it is being used by the public, the fundamental question still remains: what is the proper method of determining such valuation? Since the European war when equipment and plant construction maintenance have oftentimes doubled in value in comparison with pre-war prices, the method of proper valuation has been of prime importance. The public utilities appearing before the commission have urged that valuation be made on the basis of present-day reproduction costs. No case has arisen during this abnormal period in which the supreme court of Oklahoma has considered the method of valuation. The leading case in Oklahoma upon the question of valuation is the case of the Pioneer Telephone and Telegraph Company v. Westenhaver,⁴⁸ in which the court declares:

“No inflexible method for the ascertainment of the value of the property used in the service has been fixed by legislative bodies dealing with rates, or by the courts in determining the validity of rates, and from the nature of the subject no inflexible method can be fixed. Some-

⁴⁷80 Okla. 194, 195 Pac. 498.

⁴⁸29 Okla. 429, 118 Pac. 345.

times the present value is arrived at by ascertaining the original cost of construction and all betterments, and deducting therefrom for depreciation: but this method does not always prove to be fair and just. If there was extravagance and unnecessary waste in the construction, or, as is often the case, fictitious stocks and bonds issued, the proceeds of which did not go into the original construction, such method would prove unfair to the public. On the other hand, where the market price of the physical units or of the labor entering into the construction of the plant has advanced since its construction, the original cost may be much lower than the present value, and for that reason be to the owner of the plant an unfair determination of its present value. The method most frequently used is to ascertain what it will cost to reproduce the plant, or the cost of its replacement at the present time, and deduct therefrom for depreciation in the existing plant. Both methods may be used and considered in ascertaining the present value, and both are often resorted to, as was done in this case."

Under the authority of this case, the original cost of construction as well as the reproduction cost may be considered in arriving at a fair valuation. Under normal conditions the reproduction cost would probably be a fair test; but to base the fair value of a plant upon a theoretical cost of reproduction during a moment of high prices caused by abnormal conditions, would be as unfair to the public as the reproduction cost would be unfair to the investor during a period of abnormally low prices. In the Westenhaven case, going-concern value was considered in the valuation of the plant, which was estimated at twenty per cent of the reproduction cost.⁴⁰ The

⁴⁰29 Okla. 429 at p 448.

sum expended each year for current repairs is not counted in the depreciation of the plant as a whole, and a depreciation of seven per cent a year was allowed in the case of a telephone plant.

Any rate fixed by the commission must be for services to the people directly. Under the constitution,⁵⁰ "rate" is defined as meaning the rate of charge for services rendered, and before the commission may order a rate, it must be for services rendered directly to the people by the company affected. If there is no direct obligation between the consumer and the utility, no jurisdiction is conferred. Thus an order imposing an extra charge upon the consumers of gas furnished by the Oklahoma Gas & Electric Company for the creation of a special fund for the benefit of the Oklahoma Natural Gas Co., a producing company with whom the people had no direct relationship, is invalid.⁵¹ Likewise the commission has no jurisdiction over the rates charged by a mere producing company which furnishes gas to a company which alone is responsible for selling it to the public.⁵² The rate a public utility pays for its supplies even if they afterward are resold to the public cannot be interfered with by the corporation commission.

Should the commission fix a rate so low as to be confiscatory, the public utility may secure an injunction to enjoin the enforcement of an unreasonable rate. The injunction proceedings may be brought in either the supreme court of the state or the Federal Court, as an unreasonably low rate is equivalent to taking property without due process of law, and hence is a violation of the Federal Constitution. In a number of recent cases

⁵⁰Art. IX, Sec. 34, Const. of Okla.

⁵¹Okla. City v. Corporation Commission, 80 Okla. 194, 195 Pac. 498

⁵²Nowata County Gas Co. v. Henry Oil Co. 269 Fed. 742.

the Federal Court has enjoined the enforcement of the commission's orders.

The power of the commission to promulgate rates is a legislative power, and its exercise involves legislative discretion and policy.⁵³ While the hearing for the determination of a reasonable rate upon petition by either the public or the utility is judicial in its nature, the commission is vested with administrative functions which enable it, on its own initiative, to investigate and determine at any time rates and regulations. The commission is specifically required by the constitution and various legislative acts to keep itself fully informed as to the judicial condition, management and valuation of public utilities within the state.⁵⁴

To that end the commission is vested with full visitorial and inquisitorial powers⁵⁵ as to the management, rates, valuation, plants, equipment, receipts, capitalization, books, and records of all public utilities. The commission may, whenever necessary, require statements to be made under oath as to the management, method, and procedure in doing business. In the execution of its administrative functions, the commission is greatly handicapped by the lack of funds, which prohibits it from employing a sufficient or highly enough paid staff of experts properly to determine all the matters relating to the operation of public utilities. No doubt much of the difficulty in rate-making under the existing abnormal conditions is due to the fact that the commission is not able to employ its own experts

⁵³Fort Smith & Western Ry. Co. v. State, 25 Okla. 866, 108 Pac. 407

⁵⁴Const. of Okla. Art. IX, Sec. 18; S. L. 1913, Ch. 93; Const. of Okla. Art. IX, Sec. 29

⁵⁵S. L. Okla. 1913. Ch. 93.

to determine the proper valuation of public utilities. If the commission is to fulfill properly the purpose of its creation and the duties imposed by the constitution, it must be something more than a court to pass judicially upon the questions presented, and must be able to determine upon its own initiative and after its own investigations, the condition of public utilities in the state.

It was a rule of the common law, and is now recognized by constitutional and statutory provisions, that all persons, natural or corporate, engaged in a public business may not discriminate between consumers or patrons. Such discrimination is prohibited by the constitution of Oklahoma,⁵⁶ and the corporation commission is empowered to make all necessary orders to prevent discrimination. Discrimination is generally conceded to be an arbitrarily different charge for service made with respect to patrons similarly situated. However, discrimination in rates based on a reasonable classification is not prohibited as being contrary to public policy. Discrimination based on location, amount of consumption, and other material difference is permitted. Thus, when the corporation commission enforced a two-cent passenger rate, they permitted the Wichita Falls and North Western Railway and other lines to charge three cents per mile, either for the reason that the lines traversed sparsely settled country that greatly curtailed their income or because other factors existed which made the two cent rate insufficiently remunerative. There is no discrimination against a citizen who pays a fixed rate for water, when the city furnishes water without charge to a charitable or an educational institution,⁵⁷ nor is there when the

⁵⁶ Art. IX. Sec. 45. Const. of Okla.

⁵⁷ Fretz v. City of Edmond, 168 Pac. 800.

public schools or manufacturing institutions are furnished gas at a lower rate than private consumers.⁵⁸ Competition between carriers at commercial centers has led to discrimination in favor of larger cities. The constitution forbids transportation and transmission companies' charging more for a shorter than for a longer distance, the shorter being included in the longer.⁵⁹ The commission is, however, permitted to disregard the constitutional restriction and may authorize carriers to charge just and equitable rates to and from commercial and junctional centers to meet competitive rates of the carrier whose mileage between those points is shortest. The commission under this provision permits discrimination between competitive points.⁶⁰ The corporation commission report, 1909, 1910 provides; "No transportation or transmission company shall charge or receive any greater compensation, in the aggregate, for transporting the same class of passengers, property, or merchandise, or transmitting the same class of messages, over a shorter than a longer distance, on the same line in the same direction—the shorter distance being included in the longer; except where rates are named between competitive points to meet rates made via the line or lines of transportation companies whose distance is shorter between such points." In addition the commission may authorize or prescribe mileage tickets, commutation, excursion, and special rates.⁶¹

The constitution prohibits, however, any transportation or transmission company from giving free tickets or

⁵⁸Guthrie Light, Fuel & Improvement Co. et al v. Board of Education of city of Guthrie et al, 166 Pac. 128

⁵⁹Art. IX, Sec. 30, Const. of Okla.

⁶⁰Corporation Commission Order No. 246, Sept. 24, 1909.

⁶¹Art. IX, Sec. 30, Const. of Okla.

free transportation for use within the state, except to its employees, ministers of religion, those engaged in charitable and eleemosynary institutions, and other persons listed in Article IX, Section 13 of the constitution. But the foregoing provision does not prevent a stipulation in a franchise granted by the city to a street railway company providing for free transportation to its policemen, firemen, and United States mail carriers and reduced transportation for school children.⁶² Such discrimination as is based upon a reasonable classification is permitted by law and public policy.

The commission is given certain powers by the constitution in the investigation of interstate rates. It is required to investigate all through freight or passenger rates on railroads in the state.⁶³ When in its opinion they are excessive or are levied or laid in violation of the interstate commerce law, or the rules and regulations of the interstate commerce commission, the proper officials of the railroads are notified of the facts and requested to reduce the rates or make proper corrections. In case the rates are not changed, or the proper corrections are not made, it becomes the duty of the commission to notify the interstate commerce commission and to make proper application to it for relief. The corporation commission's power in this respect, however, has been exercised only to the extent of accepting and giving publicity to rate classification promulgated by the roads and modified or regulated by the interstate commerce commission, and to investigations to see that the railroads of the state respect the classifications approved by the interstate commerce commission.

Recent federal laws and decisions, however, have

⁶²20 Okla. 1, 93 Pac. 48.

⁶³Art. IX, Sec. 32, Const. of Okla.

made it of more concern to state commissions to see that their intrastate rates are in accord with interstate rates, rather than to demand interstate rates in harmony with their intrastate rates. It is possible for the interstate commerce commission, under the transportation act of 1920 as interpreted in Wisconsin and New York cases^{63a} virtually to lift railroad rate making out of the hands of the public utilities commission of a state and to establish a horizontal increase in all intrastate rates. It can only do this upon a showing that the continuance of the state-fixed rates would discriminate heavily against the railroad companies in their earnings from intrastate as compared with the interstate business. Similarly the interstate commerce commission can raise groups or classes of intrastate rates to relieve passengers or shippers from discrimination as compared with interstate passengers or shippers.^{63b}

The constitution of Oklahoma⁶⁴ not only gives the commission jurisdiction over rates and services, but also charges it with the duty of "supervising, regulating and controlling" transportation and transmission companies in all matters relating to the performance of their public duties and to the correcting of abuses affecting the general public. How far under this provision may the corporation commission go? The answer seems to depend upon two factors, first, upon whether or not the regulation of the commission is merely for general public safety, convenience or benefit, or whether it is for the safety, convenience and benefit of the patrons of the pub-

^{63a}R. R. Com. of Wis. v. C. B. & Q. R. R. Co., 66 L. Ed. ____; Adv. Op. April 1, 1922, p. 240.

^{63b}Houston, E. & W. T. R. R. Co. v. U. S., 234 U. S. 342.

⁶⁴Art. IX, Sec. 18. Const. of Okla.

lic utility; and, second, upon whether or not the legislature has directly given the commission further powers.

In some of the first cases involving the question of the right of the commission to regulate generally for safety and convenience, the court refused to take jurisdiction on the ground that the case arose on an appeal and the constitution provided no appeal from such actions of the commission.⁶⁵

Later several cases arose involving the same question, not by way of appeal, but through a writ of prohibition. In these cases the court took jurisdiction and held that the corporation commission has no general constitutional authority to require the performance by utility companies of public duties which have no relation or bearing to the service which they are rendering. Utilities are under no obligation to the public in general, but only to that portion of the public who are patrons. The constitutional power of the commission, therefore, in regulating carriers for safety and convenience extends only to the making of regulations for the safety and convenience of those using the utility and not for the general public. Thus it was held that the corporation commission, having no express constitutional power to do so, could not require a common carrier to construct a crossing over its right of way,⁶⁶ and could not provide for a highway or crossing over a railway where one had not been lawfully established.⁶⁷ Probably because of

⁶⁵A. T. & S. F. Ry. Co. v. State, 28 Okla. 797, 115 Pac. 872; St. L. & S. F. Ry. Co. v. State et al, 28 Okla. 802, 115 Pac. 874; and Cooper et al v. C. R. I. & P. Ry. Co. 31 Okla. 282; 121 Pac. 654 citing other cases.

⁶⁶A. T. & S. F. Ry. Co. v. Corporation Commissino, 170 Pac. 1156

⁶⁷S. L. & S. F. Ry. Co. v. Love et al, 29 Okla. 523, 118 Pac. 259

these decisions the legislature of 1919⁶⁸ expressly granted jurisdiction to the commission over all public highway crossings, where they cross steam or electric railroads or railways within the state, and also jurisdiction to prescribe the particular location of highway crossings, for steam or electric railways, the protection required, and the removal of obstructions. Under this act the corporation commission was upheld by the courts in their order requiring a railway company to pave, drain and otherwise repair and maintain two underground crossings.⁶⁹

Thus it seems that the corporation commission has no general constitutional jurisdiction to require of public utilities duties in respect to general safety and convenience, but that the legislature may grant it specific power to regulate for general safety and convenience.

Whatever regulations and facilities the commission prescribes must be reasonable and just;⁷⁰ and here as in the case of fixing a reasonable rate the courts have for well grounded reasons refused to lay down any exact standards, but determine each case in view of its own surroundings and conditions. Speaking in the case of the St. Louis & San Francisco Railroad Company vs. Reynolds,⁷¹ the Court said, quoting from *M. K. & T. Ry. Col. v. Town of Norfolk*⁷²:

"The term, adequate facilities, is not capable of exact definition, being a relative term, and calls for such facilities as may be fairly demanded, regard being had to the size of such station or place, the extent of the demand

⁶⁸S. L. 1919, Ch. 53.

⁶⁹*M. K. & T. Ry. Co. v. State*, 200 Pac. 208.

⁷⁰Art. IX, Sec. 18, Const. of Okla.

⁷¹26 Okla. 804, 110 Pac. 668.

⁷²25 Okla. 325, 107 Pac. 172.

of transportation, its relative location to other places, the cost of furnishing additional accommodations asked for, and all other facts which would have a bearing upon the question of convenience and cost."

In the case of *Oklahoma Gas and Electric Co. v. State* (Okla. App. Rep., Vol. XIX, p. 258) it was held that when a company has assumed under a franchise the duty of providing a gas distributing system reasonably adequate to meet the wants of the community and to make extensions where the growth of the community might require, it should have made reasonable extensions upon demand, and having refused to do so may be required to do so by the corporation commission.

The commission, under its power to "establish and maintain such public facilities and conveniences as may be reasonable and just," may order anything incidental to the general, prompt, safe, and impartial performance of the duties to the public at large imposed by the state in the proper exercise of its police powers upon transportation and transmission companies.⁷³ Thus it may require the installation of a telephone in a station,⁷⁴ because such facility is a convenience to the public as patrons of the road. But here again there are certain limitations, for the facility ordered established must bear some direct relationship to the duty of a railroad as a common carrier. Thus, an order of the commission requiring a common carrier to maintain a telegraph line for purely commercial purposes was properly held invalid because in this instance the purpose of the telegraph station was independent of the railroad's business as a common carrier.⁷⁵ The duty imposed must be in the inter-

⁷³C. R. I. & P. Ry. Co. v. State, 23 Okla. Okla. 94, 99 Pac. 901.

⁷⁴A. T. & S. F. Ry. Co. v. State, 23 Okla. 210, 100 Pac. 11.

⁷⁵A. T. & S. F. Ry. Co. v. State, 23 Okla. 231, 100 Pac. 16.

est of the traveling public in general. The common carrier, under Article IX, Sec. 18 of the constitution is under no obligation to furnish tank cars to a refinery, and an order compelling such facility is void for want of jurisdiction.⁷⁶ Likewise the commission has no jurisdiction to require a railway company to build a switch for the benefit of any milling company, as such facility is one not directly coupled with a public necessity, and the public interest is not involved.⁷⁷ The commission has no power to order a railway company to construct a switch at its own expense,⁷⁸ but the commission may order the railway company to furnish the switch stand and the frog after the individual wishing the switch has constructed it or paid for its construction.⁷⁹ Neither is the railroad required at its own expense to provide facilities to private individuals in order to equalize any disadvantage caused by dissimilarity of location.⁸⁰ The fact that a railway company has permitted the erection of a private elevator on its right of way does not constitute discrimination, even when the company refuses to build a switch to another elevator.⁸¹

CONSERVATION OF OIL AND GAS

A statute of 1915⁸² prohibits the production of crude oil or petroleum in the state in such a manner and under such conditions as to constitute waste. The taking of

⁷⁶S. L. & S. F. Ry. Co. v. State 76 Okla. 60, 184 Pac. 442.

⁷⁷C. R. I. & P. Ry. Co. v. State, 23 Okla. 94, 99 Pac. 901.

⁷⁸S. L. & S. F. R. R. Co. v. State, 27 Okla. 424, 112 Pac. 980; S. L. & S. F. R. R. Co. v. State, 27 Okla. 426, 112 Pac. 1121; A. T. & S. F. Ry. Co. v. State, 24 Okla. 616, 104 Pac. 908.

⁷⁹Art. IX, Sec. 33, Const. of Okla.

⁸⁰A. T. & S. F. Ry. Co. v. State, 24 Okla. 616, 104 Pac. 908.

⁸¹23 Okla. 94.

⁸²Ch. 25.

crude oil or petroleum from any oil-bearing sand at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of the crude oil or petroleum is prohibited. The law provides that "the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same" The corporation commission is given the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum. The commission therefore makes its orders, records them, and publishes them in a newspaper of general circulation.

The law defines the term "waste" in some detail⁸³ and gives the commission authority to make rules and regulations for the prevention of such wastes, "and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil." The law further regulates the production of oil by declaring: "That whenever the full production from any common sources of supply of crude oil or petroleum in the state can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation having the right to drill into and produce oil from any such common source of supply, may take therefrom any such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply." The commission is authorized to so regulate the taking of crude oil or pe-

⁸³Sec. 3.

troleum from any or all such common sources of supply, as will prevent the "inequitable or unfair taking from a common source of supply * * * and to prevent unreasonable discrimination in favor of any one such common source of supply as against another."⁸⁴ For the purpose of determining such production a gauge of each well is taken under rules and regulations prescribed by the commission.⁸⁵

Any individual, firm or corporation, or the attorney-general on behalf of the state, may institute proceedings before the commission or apply for a hearing before the commission upon any question relating to the enforcement of the act, and the commission is given jurisdiction to hear and determine the same.⁸⁶ Appeals from these determinations lie to the supreme court.⁸⁷ Penalties in the nature of not over a \$5,000 fine or thirty days imprisonment are provided for violation of the conservation law.⁸⁸

By another act of the same year⁸⁹ the production of natural gas so as to constitute waste is declared unlawful, and the term waste is carefully defined. The act provides that whenever natural gas, in commercial quantities, or a gas bearing stratum known to contain commercial quantities of gas, is encountered in any well drilled for oil or gas, the gas must be confined in its original stratum until such time as it can be produced and utilized without waste and such strata must be adequately protected from the infiltrating waters. Whenever the full production of gas from a common source of supply is in excess of the market demands, then any one having the right to drill into and produce gas therefrom, may take only that proportion of the

⁸⁴Sec. 4.

⁸⁵Sec. 6.

⁸⁶Ibid.

⁸⁷Sec. 7.

⁸⁸Sec. 8.

⁸⁹S. L. Okla. 1915, Ch. 197

natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by such an one bears to the total natural flow of such common source of supply, having due regard to the acreage drained by each well.⁹⁰ The commission may, however, by proper order permit the taking of a greater amount whenever it deems such a taking to be reasonable or equitable.⁹¹

A law of 1917⁹² created an oil and gas department within the corporation commission,⁹³ and gave exclusive jurisdiction over oil and gas matters to the commission.⁹⁴ This law gives the commission power to prescribe rules and regulations for the plugging of all abandoned oil and gas wells,⁹⁵ and provides that they must be plugged under the direction and supervision of the conservation agents of the commission. By this same law, ⁹⁶ jurisdiction was conferred upon the commission to inspect all oils and liquid products of petroleum or other bituminous substances or into which the product of petroleum enters. By a law of 1919 ⁹⁷ the oil and gas conservation agent of the commission is authorized to prescribe rules and regulations for the determination of the natural flow of the well and to so regulate the taking of natural gas "from any or all such common sources of supply" within the state, as to "prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to

⁹⁰Sec. 4.

⁹¹Sec. 3.

⁹²Ch. 207.

⁹³Sec. 1.

⁹⁴Sec. 2.

⁹⁵Sec. 3.

⁹⁶Sec. 4.

⁹⁷Ch. 197.

prevent unreasonable discrimination in favor of any one such common source of supply as against another.”

Section five of this act provides that every person, firm or corporation engaged in the business of purchasing and selling natural gas shall be a common purchaser thereof, and shall purchase all the natural gas which may be offered for sale, without discrimination as to producers, or source of supply, save as authorized by the commission. If the purchasing concern is unable to purchase all the gas offered, then it shall purchase from each producer ratably. The commission has authority to make regulations for the “delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade.” Hearings before the commission and appeals from its decisions are practically the same as under the law governing oil and petroleum above discussed and cited.

The corporation commission was made ex-officio gauger of liquids used for illumination, heating or power purposes,⁹⁸ and was authorized to appoint deputy oil inspectors. It was given the further power to regulate the tests for oils and to promulgate rules and it is made the duty of the inspectors to follow these rules.⁹⁹

Domestic gas pipe corporations and municipal corporations are permitted to contract with and purchase gas from foreign or interstate pipe line companies upon the latter obtaining a license from the corporation commission. The corporation commission may revoke this license when in its discretion the public interests demand

⁹⁸As to the legality of taking such functions away from the state mine inspector, see *Love v. Boyle*, 180 Pac. 705.

⁹⁹Secs. 2 and 5.

it.¹⁰⁰ While no cases have arisen so far under this law, it probably would be declared unconstitutional as interfering with interstate commerce, following the precedent established in *West v. Kansas Natural Gas Co.*, 221 U. S. 229.

A prerequisite to the carrying of gas is the filing in the office of the corporation commission of a "proper and explicit acceptance" of the provisions of the law governing gas transmission and of the constitution of the state, and other information such as route, size of pipe line, capacity, location of pumping stations, gate valves, check valves and connections and appliances.

It would be impossible to give within the space of this chapter all the regulatory orders the commission has issued since the date of its creation. But the commission is required by the constitution to make an annual report to the governor of its proceedings, and to recommend any additional legislation which it may deem expedient.¹⁰¹ There are contained in such annual reports all the orders of the commission, which are still in effect, since the date of its creation.¹⁰² As is pointed out elsewhere, the power of the commission under Article IX, Section 18 of the constitution, and by subsequent legislation, is very extensive. Reference has already been made to the power of the commission to establish rates. The constitution of Oklahoma, at the time of its adoption, imposed a two-cent per mile fare for passenger service within the state, but the commission was given the privilege of changing the rate if the two cent fare proved

¹⁰⁰S. L. 1913, Ch. 98.

¹⁰¹Art. IX, Sec. 25, Const. of Okla.

¹⁰²Copies of the annual reports of the commission may be secured without charge from the office of the corporation commission.

non-compensatory.¹⁰³ On March 18, 1918, the two cent fare was enjoined by the Federal Court as confiscatory and void, and the commission has since increased both passenger and freight rates. The commission, in the exercise of its power to issue regulatory orders and require public service facilities, is controlled by what under all circumstances, is reasonable and just, and by the provision that the facility so ordered to be established relates to the public service corporation in the performance of its public duty. Thus the commission may require interstate trains to stop at stations where the companies have not furnished adequate facilities,¹⁰⁴ or may order the refund of money collected by a public utility in violation of its orders,¹⁰⁵ or if the public convenience demands, it may order the establishment of a depot.¹⁰⁶ Before any depot is permanently located, the plans and specifications must be approved by the commission¹⁰⁷. The commission may specify materials used in construction depots.¹⁰⁸ The commission may, by Sec. 1190, R. L. 1910, order the establishment of a union depot. The burden of proving an order of the commission unreasonable rests with the party claiming the order to be unreasonable.¹⁰⁹

¹⁰³Art. IX, Sec. 37, Const. of Okla.

¹⁰⁴S. L. & S. F. Ry. Co. v. Town of Troy, 25 Okla. 749, 108 Pac. 735; but see A. T. & S. F. Ry. Co. v. State, 175 Pac. 199, which holds that the commission may not require a through interstate train to be stopped at a community which already receives adequate service from other trains.

¹⁰⁵Pioneer Telephone & Tel. Co. v. State, 40 Okla. 417, 138 Pac. 1033.

¹⁰⁶Midland Valley Ry. Co. v. State, 29 Okla. 777; 119 Pac. 413; S. L. & S. F. Ry. Co. v. Sutton, 29 Okla. 553, 119 Pac. 423.

¹⁰⁷Order No. 19, Corp. Com. Rep. 1919, p. 6.

¹⁰⁸S. L. & S. F. Ry. Co. v. Sutton, 29 Okla. 553, 119 Pac. 423.

¹⁰⁹Art. IX, Sec. 22, Okla. Const.

The orders of the corporation commission are neither final nor conclusive, and under our system of jurisprudence, the rulings of any administrative or quasi-judicial body cannot be made final, but must always be subject to judicial review. The remedies against the validity of the order of the corporation commission are: 1. Appeal to the supreme court of the state. 2. Application directly to the commission to set aside the order. 3. Actions in equity to restrain its enforcement.¹¹⁰ An appeal from the rulings of the commission may be taken by the corporation whose rates, charges, classification of traffic, schedule, facilities, conveniences, or service are affected; by any person deeming himself aggrieved by such action; or by the state, if permitted by law.¹¹¹ An appeal is one of right and may be taken only to the supreme court of the state, according to the laws governing appeals from the district court to the supreme court.¹¹² The district courts of the state have no jurisdiction to prescribe and compel by injunction a schedule of rates named by the court, pending a hearing before the corporation commission, as such order is a legislative one.¹¹³ An appeal must be made within six months from the date when the final order is made by the commission.¹¹⁴

The appellate jurisdiction of the supreme court does not extend to all orders of the commission, but is restricted to the orders of the commission concerning matters set out in Art. IX, Sec. 20, of the constitution, prescribing rates, charges or classification of traffic, or affecting the train schedule, or requiring additional facilities, conven-

¹¹⁰40 Okla. 417, 138 Pac. 1033.

¹¹¹Art. IX, Sec. 20, Okla. Const.

¹¹²*Ibid.*

¹¹³40 Okla. 583, 139 Pac. 694.

¹¹⁴S. L. 1910-11, Chap. 18.

iences, or public service transportation and transmission lines. As a result Art. IX, Sec. 20, conferring appellate jurisdiction upon the supreme court is not as broad as Art. IX, Sec. 18, conferring power upon the corporation commission.¹¹⁵ The commission may therefore issue regulatory orders, which are not reviewable by the supreme court upon appeal; e. g. an order repealing a previous order which imposed a penalty for failure to purchase tickets;¹¹⁶ requiring all railroad and street car companies to report accidents to the commission;¹¹⁷ ordering reports as to valuation of property,¹¹⁸ is within the power of the corporation commission under Art. IX, Sec. 19 of the constitution, but it is not subject to appeal to the supreme court under Art. IX, Sec. 20. The supreme court can only review cases affecting the relation of the public to the transportation itself and can not act merely to correct abuses independent of the purpose of transportation.¹¹⁹ While certain orders of the commission are not subject to appeal, this does not mean that the power of the commission is unlimited. The power of the commission may always be tested by a writ of prohibition, which is the proper remedy when an inferior tribunal assumes to exercise judicial power not granted by law or the constitution.¹²⁰

When an appeal is taken from a ruling of the commission, the chairman of the commission shall certify to the supreme court all the facts upon which the action appealed from was based, together with such other evidence

¹¹⁵A. T. & S. F. Ry. Co. v. State, 28 Okla. 797, 115 Pac. 872.

¹¹⁶A. T. & S. F. Ry. Co. et al. v State, 28 Okla. 12, 115 Pac. 1101.

¹¹⁷St. L. & S. F. Ry. Co. v. State et al., 24 Okla. 805, 105 Pac. 351.

¹¹⁸A. T. & S. F. Ry. Co. et al. v. State, 27 Okla. 329, 117 Pac. 328.

¹¹⁹A. T. & S. F. Ry. Co. v. State, 28 Okla. 797, 115 Pac. 872.

¹²⁰A. T. & S. F. Ry. Co. v. State, 29 Okla. 738, 119 Pac. 207.

introduced before, or considered by the commission as may be required to be certified by any party in interest or as the commission may deem proper.¹²¹ The supreme court has jurisdiction to consider and determine the reasonableness and justness of the action of the commission appealed from, but the order of the commission is regarded as *prima facie*, just, reasonable and correct.¹²² In disposing of the case the supreme court may affirm, reverse or remand the ruling of the corporation commission.

CRITICISMS AND RECOMMENDATIONS

Criticism against the present regulation of public utilities has been based in the main upon two contentions:

First, that the corporation commission has not adequately protected cities and those who dwell therein. Second, that the commission has tended to become a court, thus neglecting its functions as an investigational and prosecuting and public defending body. For the reasons before advanced, it seems evident that the regulation of utilities, even in cities, must remain a state function. In respect to the second objection, it may be said that the legislature has not given the commission sufficient money, or provided salaries large enough to get first-rate men, to enable it to make such searching investigations as to value, equipment and methods as should be made in order to regulate utilities properly. There is perhaps something anomalous in having the commission act as an investigational body and public defending body, at the same time that they act almost as a court. That is, the commission, sitting as a judicial body, must rebut the evidence presented by the corporations with

¹²¹Art. IX, Sec. 22, Const. of Okla.

¹²²*Ibid.*

the evidence which the commissioners themselves have gathered. The chief objection of city officials and others to this procedure in the past has been that the commission has not had the means of securing sufficient evidence to rebut the contentions of the utilities, and yet in passing upon the case has determined it upon the showing made by both sides. This situation could be remedied by dividing the functions of the commission into two different bureaus or divisions. One should act as an investigational, prosecuting, public defending body, while the other should act merely in a judicial capacity. There are many sound arguments, however, for permitting the mingling of functions as at present, the chief of these being that it makes for much greater flexibility and also prevents decisions from being made on a purely legalistic and formal basis.

CHAPTER VII

SUFFRAGE AND ELECTORS

Article III of the Oklahoma constitution is devoted to suffrage and elections. The first section provides that electors of the state shall be "male citizens of the United States, male citizens of the State, and male persons of Indian descent native of the United States, who are over the age of twenty-one years, who have resided in the State one year, in the County six months, and in the election precinct thirty days, next preceding the election at which any such elector offers to vote * * *" It is stipulated in the same section that persons adjudged guilty of a felony after the adoption of the constitution, subject to such exceptions as the legislature prescribes (unless citizenship shall have been restored in the manner provided by law), persons being kept in a poor house or other asylum at public expense, except Federal or Confederate ex-soldiers, persons in a public prison, idiots and lunatics, shall not be entitled to vote. In the list of those entitled to vote must now be included women who meet the qualifications laid down by the constitution.¹ Women who possessed "like qualifications of male electors" had the constitutional right, before the adoption of the suffrage amendment, to vote at school district elections or meetings.²

From the above list of persons eligible to vote, are ex-

¹Amendment to Art. III, Sec. 1, Constitution of Oklahoma, and Amendment XIX to Constitution of United States, approved Mar. 17, 1919.

²Const., Art. III, Sec. 3.

cluded members of the regular army or navy of the United States who, although they have not been citizens of Oklahoma, are stationed here in the cause of duty; as according to the constitution they cannot gain residence in the state.³ No person who is a citizen of Oklahoma loses his residence while absent from the state in the military or naval service of the United States.⁴

Section 4A of Article III, the so-called grandfather clause, providing that "No person shall be registered as an elector of this State, or be allowed to vote in any election held herein, unless he is able to read and write any section of the Constitution of the State of Oklahoma; but no person who was, on January 1st, 1866, or at any time prior thereto, entitled to vote under any form of Government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to so read and write sections of such constitution," was declared invalid by the United States supreme court.⁵

A qualified and registered elector unavoidably absent from the county in which he is registered on the day of the general election may, with certain minor limitations, vote at any general election in any precinct in which he may happen to be, for all federal, state, district, or county officers. Upon presenting himself at any precinct to vote, he is required to make affidavit that he has not voted and that he will not vote in any other precinct within the state at this election. Such an elector must state the precinct and county in which he claims his residence, the reason for being absent from his own place of voting, and his temporary stopping place in the precinct and

³Art. III, Sec. 2.

⁴Ibid.

⁵Guinn v. U. S., 238 U. S. 347.

county in which he is voting. He must also produce his registration certificate from the precinct in which he is registered. In case the names of district or county officials on the ballot given him are different from those in his own county, he may write the names of the candidates of his own county in ink over the candidates' names on the ballot.⁶ The affidavit and ballot of such a voter are mailed to the secretary of the county election board of the county in which the elector lives. In case the county election board shall determine that this elector was duly qualified, they shall count his ballot.⁷

Any qualified elector of the state who is in the active military service of the state or in the military or naval service of the United States may vote by mail.⁸

REGISTRATION.

The constitution provides (Art. III, Sec. 6): "In all elections by the people the vote shall be by ballot and the Legislature shall provide the kind of ticket or ballot to be used and make all such other regulations as may be necessary to detect and punish fraud, and preserve the purity of the ballot; and may, when necessary, provide by law for the registration of electors throughout the State or in any incorporated city or town thereof, and, when it is so provided, no person shall vote at any election unless he shall have registered according to law." The legislature has acted according to these provisions in establishing compulsory registration. A system of county and precinct registrars is arranged⁹ and the reg-

⁶Bunn Supp. 1918, 3122a, S. L. 1916, Ch. 25, Sec. 1.

⁷Bunn Supp. 3122b, S. L. 1916, Ch. 25, Sec. 2.

⁸Bunn Supp. Ch. 29, Art. IX, C. S. L. 1917, Ch. 157.

⁹Bunn Supp. 1918, Sec. 3177 b, c, S. L. 1916, Ch. 24, Secs. 2. 3.

istration of all voters in the state is required. By a session law of 1916¹⁰ it was made the mandatory duty of every precinct registrar to issue registration certificates to every qualified elector who voted in the general election of November, 1914, without application from said elector. Failure on the part of any registrar to do this shall not prevent such elector from voting in any election. "Provided further, that each county election board in this state shall furnish to each precinct election board in the respective counties a list of the voters who voted at the election in November, 1914, and such list shall be conclusive evidence of the right of such person to vote."¹¹ Other persons are required to register, at the time and under the conditions fixed by law.

The registration certificate records the elector's name, address, county, precinct, school district, occupation, age, race, color, height, weight, color of hair, color of eyes, and political affiliation; and a reference to two freeholders of the precinct as witnesses to his statements. The elector may be required to take an oath before the registrar that his statements are true.¹² The original registration certificate is given to the elector and the duplicate is retained by the registrar, undetached from the certificate book. At the close of the registration period the registrar compiles the data from these duplicates into a precinct registration book, with all names arranged in alphabetical order according to surname; and the duplicates are then detached and turned over to the county registrar. The secretary of the county election board

¹⁰Included in Bunn. Supp. 1918, Sec. 3177d, S. L. 1916, Ch. 24, Sec. 4, S. L. 1917 Ch. 159.

¹¹Ibid.

¹²Bunn. Supp. 1918, Sec. 3177 e, f, g, S. L. 1916, Ch. 24, Sec. 5, 6, 7.

makes up a similar book for the entire county "in alphabetical order and by election precinct;"¹³ and files the book with the county clerk as a permanent public record. The duplicate certificates are kept by the secretary of the county election board. Certificates may be cancelled and new ones issued upon change of residence or politics, but in the latter case application must be made at least ninety days before the next primary election.¹⁴ This provision is an effective means of preventing "bolting" in the primaries from an inferior list of candidates in the elector's party to some superior candidate in the other.

At the election, the precinct register and the duplicate certificates are placed in the hands of the precinct inspector; and the election board may demand the registration certificate of any elector for comparison with duplicate and register. If all the records agree, and if the elector shall satisfy the election board that he is the person described in the certificate, and that he is at the time he offers to vote a qualified elector of the precinct, he shall be entitled to vote; otherwise the election board shall endorse his registration certificate, the duplicate, and the precinct registration book, with the word "Refused" and the date.¹⁵ In case any registered voter fails to vote, the inspector and judges of election note opposite his name on the precinct registration book the words "Not voted"; and the date. Upon the failure of any elector to vote at three successive elections, his registration is cancelled. It is hardly necessary to point out the ease with which this measure, designed to prevent "repeating" and to do away with the evil practice of pack-

¹³S. L. 1916, Ch. 24, Sec. 7.

¹⁴Ibid Sec. 8.

¹⁵Ibid Sec. 12.

ing a doubtful district with "floating" voters, can be turned to sinister ends in the hand of the unscrupulous. In case a qualified voter appears "undesirable" to the election board, because of race or politics or for any other reason, it is easy to find some "discrepancy" between certificate and duplicate, or some "irregularity" in the record in the precinct registration book, or some doubt in the minds of the board whether the person presenting the certificate is in fact the person named and described thereon. This is, naturally, no argument against the system, for a rogue-proof law seems as impossible to secure as a fool-proof one; but it is an argument in favor of careful selection of registrars and precinct election officials, upon whose conscientious performance of their duty so much depends. A fair election, safeguarded by the registration laws, but opened freely to every qualified elector, which it is the purpose of the registration law to secure, can be held only when the election officers are men too honorable to misuse their authority. In case they value party above the American ideals and standards of democratic exercise of the suffrage, this law can be perverted to work more harm than good.

PRIMARY ELECTIONS

Oklahoma is one of the numerous states in which party candidates for various offices are nominated by means of a primary election. The constitution of Oklahoma provides for a mandatory primary system, by Article III, Section 5, which reads, "The Legislature shall enact laws providing for a mandatory primary system, which shall provide for the nomination of all candidates in all elections for State, district, county, and municipal officers, for all political parties, including United States senators: Provided, however, this provision shall not exclude the

right of the people to place on the ballot by petition any non-partisan candidate."

As we have seen in a preceding chapter, the constitution of Oklahoma embodies much of the political philosophy current in the first decade of the twentieth century. An important tenet of this philosophy was faith in the direct primary as a means of doing away with the flagrant abuses often practiced in nominating candidates at party conventions, and of placing nominations under popular control, without destroying the party system. Professor Merriam¹⁶ attributes the direct primary movement in part to "desire for wider popular participation in government," and in part to "general discontent regarding social and industrial conditions," leading to "a crusade for responsible party government." The strength of this crusade is shown in the following remarkable statement:

"In 1901 Florida, Oregon and Minnesota enacted important direct primary laws; in 1902 Mississippi followed; and in 1903 the first statewide primary law with fairly complete provisions for legal supervision was enacted by the state of Wisconsin. In 1904 a similar act was passed by Oregon and an optional law by Alabama. In 1905 Illinois, Michigan, Montana, South Dakota and Texas followed with more or less complete laws. In 1906 Louisiana and Pennsylvania followed; in 1907 Iowa, Nebraska, Missouri, North Dakota, South Dakota and Washington placed very complete laws upon their statute books; and in 1908 Illinois, Kansas, Oklahoma, and Ohio were added to the list."¹⁷

It is not difficult, then, to understand why the consti-

¹⁶Merriam, C. E., *Primary Elections*, 1909, p. 69.

¹⁷Merriam, *Op. cit.*, p. 70.

tution of Oklahoma embodies a provision establishing a mandatory direct primary system; but it is a little surprising, in view of the large amount of statutory law embodied in the constitution, that the legislature is given so free a hand in this matter. Possibly the framers of the constitution felt that the provisions that the primary system should be mandatory rather than optional, and that it should apply to "all candidates in all elections * * * for all political parties" covered the ground so fully that the legislature could do nothing except build upon this foundation. An examination of the law governing primary elections will show what sort of structure has been developed by legislative action.

ELECTION BOARDS

Primary elections, as well as general elections, are conducted by state, county and precinct election boards. Such boards are established by legislative enactment, in pursuance of the duty laid upon the legislature by the constitution, which provides that: "The Legislature shall enact laws creating an election board (not more than a majority of whose members shall be selected from the same political party), and shall provide the time and manner of holding and conducting all elections."¹⁸ The provisions in regard to the personnel of these boards, and the methods of appointment, are significant and illuminating.

The state election board consists of three members, one of whom is the secretary of the state senate. He acts as secretary of the state election board. The other two members are appointed by the governor in the following manner: The state central com-

¹⁸Constitution, Art. III, Sec. 4.

mittee of each of the two political parties receiving the highest number of votes in the last general election for state officers presents to the governor a list of five names, and the governor may choose one person from each list to serve on the state election board. These appointments are made "by and with the advice and consent of the senate." By this method the political party which is in power in the state senate obtains majority representation on the state election board, and the opposing party has no representative. Any third party or minority party or non-partisan groups can under no circumstance obtain representation upon the state election board, as the law requires that the two appointees of the governor shall be "each from the two dominant political parties,"¹⁹ and also expressly provides that even if one of the largest two parties fails or refuses to make nominations, the governor may appoint a member of such party upon the board.²⁰

The compensation of the board is fixed by law; and it is provided that "The State Election Board shall maintain an office at the State Capitol continuously, with the secretary in charge."²¹ A new state election board is appointed every two years.

The state election board selects one member of the county election board, who acts as secretary; and each of the two majority parties may select one member. In case a party fails to appoint a member of the county election board, the state election board may fill the vacancy, "after due notice by registered mail to the chairman of the county central committee of such political party." Not more than two members of the county board may be-

¹⁹Bunn, Supp. 1918, Sec. 3182 d. S. L. 1913, Ch. 157, Sec. 4.

²⁰Ibid.

²¹Bunn, Supp. 1918 Sec. 3182e. S. L. 1913, Ch. 157, Sec. 5.

long to the same political party, nor may more than one member be named from any one county commissioner's district. In case a vacancy occurs in either state or county election board, the person appointed to serve for the unexpired term shall be of the same political party as his predecessor.²² The state election board may remove at will, at any time, any member of the county election board, and the county board has the same authority in regard to the precinct board.²³

The county election board selects a board of three members for each precinct in the county, to serve for four years. "Such precinct election board shall constitute the board of election officers, for their respective precincts, and shall have complete charge of all elections held in such precincts."²⁴ No more than two members of the precinct board shall belong to the same political party, "unless it is impossible to secure a man qualified to attend to the duties of the office from the ranks of the other party."²⁵ If the precinct central committee of a political party "suggests its representation on a precinct board, the county election board shall be confined to such names, in choosing such party's representation."²⁶ The county board designates the three members of the precinct board as, respectively, inspector of elections, judge and clerk. At the election, however, they may exchange positions by mutual consent, "in the interest of promptness in expediting business."²⁷ Members of all election boards must take the oath of office for their respective positions.

²²Bunn, 1918, Sec. 3061; S. L. 1910-11, Ch. 106, Sec. 3.

²³Bunn, 1918, Sec. 3182g, S. L. 1913, Ch. 157, Sec. 7.

²⁴Bunn, 1918, Sec. 3065; S. L. 1910, Ch. 106, Sec. 5.

²⁵R. L. 1910, Sec. 3066.

²⁶R. L. 1910, Sec. 3066.

²⁷R. L. 1910, Sec. 3072.

By this series of provisions, the legislature of Oklahoma has insured the conduct of elections by members of the two "dominant parties"; and has neatly arranged that the party in power in the senate shall have and hold majority representation on every election board in every county and every precinct throughout the state.

NOMINATING PETITIONS

Any person desiring to become a candidate in a primary election for a political party nomination shall petition the proper election board to have his name printed upon the political party ticket. The so-called petition must be signed by the candidate and must contain his place of residence, his post-office address, the name of the party before which he desires to become a candidate, and the date of the election. All nominating petitions for presidential electors, United States Senators, representatives in Congress, state officers, members of the senate and house of representatives, district judges, and all other offices for which the electors of the entire state, or a subdivision greater than a county, are entitled to vote, must be filed with the secretary of the state election board. All nominating petitions for county and township offices or offices for which the electors of a subdivision of a county are entitled to vote, are filed with the secretary of the county election board.²⁸ Since the placing of names upon the ballot for a primary election is a mere ministerial duty which in no way involves judicial or discretionary power, a writ of prohibition keeping the board from so acting will not lie.²⁹

²⁸R. L. 1910, Sec. 3032.

²⁹State ex rel. Caldwell v. Vaughn et al. 33 Okla. 384, 125 Pac. 899.

It seems, however, that a writ of mandamus would lie in case the board neglected, refused, or failed to do its duty. Thus, we find the courts saying: "It is plaintiff's contention that he should be treated as the nominee and candidate of the Progressive party, because of the alleged neglect of duty by the state election board to place his name upon the ticket for the primary election; but, assuming that the board was delinquent in this respect, still we think no such right follows to plaintiff, because *it was his duty to see that such tickets were printed by instituting proceedings in the courts to compel the performance of duty*³⁰ and we cannot say that, if plaintiff's name had been printed on a ticket at the primary, he would have received any votes."³¹

Nominating petitions which are to be filed with the secretary of the state election board must be filed not more than one hundred days nor less than fifty days before the day fixed by law for the primary election. In a special primary election, called by proclamation of the governor, petitions may be filed not less than ten days in advance. Nominating petitions which must be filed with the secretary of the county election board shall be filed not more than ninety days nor less than thirty days before the day fixed by law for the primary election.

The names of non-partisan candidates may not be printed upon the official ballot for the general election unless a nominating petition in conformity with the provisions of the primary election law shall have been filed for such candidates, with the proper election board and within the time prescribed for the filing of nominating petitions for the primary election.³² The reason for this

³⁰Italics not in original.

³¹Persons vs. Penn. et al, 33 Okla. 581, 127 Pac. 384.

³²S. L. 1915, Ch. 152, amending R. L. 1910, Sec. 3033.

requirement is not apparent at first; for as non-partisan candidates are not voted upon at the primary election it appears unreasonable that they should be required to announce their candidacy so early. However, it appears upon investigation that the purpose of the law is to prevent any persons who have been candidates for party nomination in the primaries, and have failed to secure such nomination, from afterward declaring themselves independent or non-partisan candidates and presenting their names as such at the general election. The danger that party votes may be diverted to such "bolt-ing" candidates may be very great in case they have large personal followings; and it is necessary to the preservation of party unity and party control that this danger shall be prevented.

TIME OF PRIMARIES

Primaries are held on the first Tuesday in the month of August of each even-numbered year. At this general primary each political party must nominate its candidates for all elective offices in the state, district, county, township and precinct. United States Senators are likewise nominated at this election. Nominations for any special election, held for the purpose of filling a vacancy in any office caused by death, resignation, or removal, may be made by a convention ("delegate convention"), if in the judgment of the state election board, the time is too short in which to hold a primary election, or the cost of holding it would be excessive or unnecessarily burdensome.³³ If special primary elections are held to fill vacancies in the legislature they are held on a day

³³R. L. 1910, Sec. 3025. In practice this applies chiefly to vacancies in the legislature as most vacancies are filled by appointment.

fixed by proclamation by the governor. The proclamation must be issued ten days before the primary election, if time permits; and nominations may be made by political parties, either in mass or delegate convention, or by petition of not less than one hundred qualified voters.³⁴

NOTICE OF PRIMARIES

At least fifty days before the time of holding a regular primary election, the secretary of the state election board transmits to the secretary of each county election board a notice in writing, designating the officers to be nominated at the primary. Within ten days after the receipt of this notice, the secretary of the county election board mails written notices to the inspectors of elections in the various precincts. This notice contains the names of all the offices for which nominees are by law to be chosen at such precinct, and specifies the polling places, the date of the primary and the hours of the opening and closing of the polls. Within ten days after the precinct election inspector has received the notice from the secretary of the county election board, he must post in at least three conspicuous places in the precinct, a notice specifying the polling places and the date of the primary election, with the hours of its opening and closing, and the names of all county and township offices for which the several political parties shall nominate candidates.³⁵

The voting places in each precinct or ward and the inspectors, judges and clerks are designated and selected and advertised in the same manner as provided by law for general elections.³⁶ Supplies for each ward and

³⁴S. L. 1913, Ch. 96.

³⁵R. L. 1910, Sec. 3034.

³⁶Ibid. 3026.

voting precinct are provided by the same officers and in the same way, and all expenses of the primaries are borne and paid for in the same manner as at the general elections.³⁷

BALLOTS

A law provides that, "The names of candidates of the several political parties shall be printed upon separate ballots and of different color. No party emblem or device shall appear thereon, and no elector shall be permitted to vote for the nomination of candidates of more than one party in any primary election. The ballots for primary elections shall be printed by the county election boards as nearly in conformity with the provisions of the general election laws as may be."³⁸

The purpose of this section, evidently, is to provide a closed primary. One of its most important effects is to prevent the voter at a primary election from voting different party ballots for congressional, state and county candidates.³⁹ The result of such a method is that no chance is given for a person to nominate local officials of a different political complexion from that of the state officials. Since the primary election is the real election in a community where the great majority of electors belong to one party, very often no candidate from a minor political party will run in the primaries. Moreover, since a person practically loses his vote in local matters altogether unless he votes in the primary, this system forces electors to register as members of the predominant party, and therefore tends to keep such party in power.

Sample ballots to the number of ten per cent of the

³⁷Ibid, Sec. 3028.

³⁸R. L. 1910, Sec. 3027.

³⁹Ex parte Lee F. Wilson, 7 Okla. Cr. 610. 125 Pec. 739.

regular ballots are printed for the use of each political party before or during the primary election. These sample ballots are a regular part of the election supplies, and are delivered to the various precincts as other supplies. They are exact duplicates of the regular ballots, but are printed on paper of a different color, and are marked "Sample Ballots." The law requires that such ballots be posted in at least three conspicuous places near the entrance of the election enclosure.⁴⁰

CONDUCT OF PRIMARIES

In all respects, except where especial provision is made for exceptions in the primary law, the general election laws govern the conduct of primary elections.⁴¹

No special provision is made by the primary law for testing the qualifications of the elector as to his party affiliations. The courts have held, however, that when an elector demands a party ballot, if the election inspector, judge or party watcher has reason to believe that the elector is non-partisan, or is not a member of the party whose ballot he is attempting to vote, it is the duty of the election officer to challenge his right to vote. Any challenger for any candidate may challenge the right of an elector to vote the ballot of the party making the challenge. If the challenge be on the ground that the elector is not in good faith a member of the party whose ballot he is attempting to vote, the inspector has the duty of challenging him as in respect to any other qualification, such as residence or age.

An elector who resists the challenge and makes oath⁴² that he meets the proper qualifications as a partisan

⁴⁰R. L. 1910, Sec. 3031.

⁴¹Ibid, Sec. 3035.

⁴²See below for description of oath required.

voter should bear in mind the following tests: Did he vote that party ticket at the last general election? Has he been affiliated with the party, does he stand by his party organization, does he submit to the party rules and usages, and accept and support the regular party nominations?⁴³ The second test laid down by the court here means little, since there are practically no party rules and usages. Moreover, since one is not legally bound to support in the election the party candidates for whom he voted in the primaries, and since the voting in the general elections is by secret ballot, there is no way of knowing whether or not one has accepted and supported the regular party nominations. It is said that many persons in the state of Oklahoma believe, and that certain unscrupulous political workers have encouraged the belief, that the law requires all who have voted in a primary election to vote the ticket of the same party in the general election. There is no way of checking up the accuracy of this rumor, but it is evident that such a belief, if widespread, forms an effective means of party control, at the same time that it defeats the primary aim and object of the secret ballot in the general election.

THE COUNTING OF THE PRIMARY VOTES

Official counters are chosen for primary elections as at general elections. They prepare and sign a statement giving the names of the persons voted for, the office for which each sought nomination, and the number of votes received by each. This is certified to by the chairman of the precinct board and becomes a part of the official returns. The returns are made, as in the general election, to the county election board. In the case of all of-

⁴³Ex parte Lee F. Wilson 7 Okla. 610, 125 Pac. 739.

fices whose electorate is only county-wide or less than county-wide, the county election board tabulates the vote from each precinct. The persons receiving the greatest number of votes for each nomination are declared the party candidates for the respective offices for which they were running; and the county election board gives them certificates of nomination. These certificates entitle such nominees to have their names placed upon the official ballot.⁴⁴ While there seems to be no statutory provision for tabulating the primary vote for offices whose constituency is greater than the county, except in the general law, as a matter of practice the precinct sends in its result to the county election board and this in turn sends its tabulation to the state election board, which certifies those for the respective offices who have received the greatest number of votes and so are entitled to have their names appear on the general election ballot.⁴⁵

All contests arising out of primary elections are decided in the same manner as contests following general elections.⁴⁶ In addition to this provision, another section of the primary election law⁴⁷ gives to any candidate in a primary election the right to "challenge the correctness of the announced result thereof by filing with the county election board, whose duty it is to canvass the returns in such race, a verified statement setting forth a state of facts which, if true, would change the

⁴⁴R. L. 1910, Sec. 3037.

⁴⁵R. L. 1910 Sec. 3035, provides that the ballots shall be counted and return made as in general elections. Sec. 3117 dealing with the returns under the general election law provides the procedure for making the returns in the case of elections of officers voted upon by districts larger than the county.

⁴⁶R. L. 1910, Sec. 3054.

⁴⁷R. L. 1910, Sec. 3038.

result in his favor.” When such a statement is filed, “it shall be the duty of such board to inspect and count the ballots questioned by such candidate within ten days after he has filed his affidavit. Such board shall, upon the conclusion of such recount, proceed to certify the result.” In construing this section, the courts have held that when a county election board certifies one set of primary election returns to the state election board, and the latter has canvassed said returns and issued a certificate of nomination, it cannot be compelled to meet again and recanvass another set of returns subsequently certified to it by the county board. “A defeated candidate who complains that the returns canvassed by the State Election Board were irregular and fraudulently made by the county board, has a remedy by an action in the nature of *quo warranto* against the holder of such nomination to try the title thereto.”⁴⁸

PRIMARY EXPENDITURES

Each primary election candidate, for all offices for which the voters of more than a county have the right to vote, files with the secretary of the state election board the names of all individuals, with their post-office addresses, “by, or through, whom he has expended, or proposes to expend money in defraying the expenses of his campaign.” The candidates for office within the borders of a county likewise file such names with the secretary of the county election board. In case a candidate determines not to authorize any one to act for him financially, he notifies the election board that he has not authorized and will not authorize any one to act

⁴⁸Robert v. Marshall, 33 Okla. 716, 127 Pac. 703; from syllabus by court.

for him, but that he, in person, will account for the money or other things of value expended in the interests of his candidacy. This information must accompany every candidate's formal application to have his name printed on the official primary ballot. Should any candidate fail to file such names or information with the proper election board, the name of said candidate shall not be certified, and the state election board must not place the name upon the official ballots.⁴⁹

Within ten days after any primary election, every candidate must prepare a carefully itemized statement, setting forth each item of expense in detail, "showing a full and complete record of his expenditures of money or other things of value, including promises to pay money or other things of value, as well as all treats, presents, or favors which cost money, or other thing of value, either present or future, which expenditures, treats, promises, presents, or rewards were intended for the purpose of aiding or advancing in any way the opportunities of such candidates, or which would have or be likely to have that result."⁵⁰ The report of expenditures must be subscribed and sworn to by the candidate.⁵¹

A certificate of nomination will not be issued to a successful candidate who fails to file his record. A candidate who was not successful and fails to file this report is guilty of a misdemeanor, and upon conviction is fined not less than \$25.00 or more than \$500.00.⁵² Failure of a nominee to file the names of persons authorized to make expenditures prevents him from having his name

⁴⁹R. L. Okla. 1910, Sec. 3042.

⁵⁰R. L. 1910, Sec. 3043.

⁵¹Ibid.

⁵²Ibid. Sec. 8044.

placed upon the official election ballot.⁵³ These reports remain on file in the hands of the secretary to whom they are given and are subject to public inspection.⁵⁴ Campaign committees, either those acting for individuals or those managing the campaign for a political party, are obliged to file with the secretary of the state or county election board, as the case may be, a full and complete report of all moneys or other things of value which came into such committee's hands or were expended by them.⁵⁵

A schedule of permissible expenditures is embodied in the law,⁵⁶ and any candidate expending more money than is set forth in the schedule is deemed to be guilty of a misdemeanor, and upon conviction may be fined not

⁵³Ibid. Sec. 3045.

⁵⁴Ibid. Sec. 3046.

⁵⁵Ibid. Sec. 3047.

⁵⁶R. L. 1910, Sec. 3050, "**Limitation of Expenditures in Primary.**" Candidates before primary elections held under the provisions of this chapter shall be limited in the amount of expenditures for said primary to the following respective amounts:

Candidates for nomination for United States senator or governor, an amount not exceeding-----	\$3,000.00
Candidates for nomination for any other office in which electors of entire state shall vote, an amount not exceeding -----	1,500.00
Candidates for nomination for supreme court, justice or judge of the criminal court of appeals, an amount not exceeding -----	1,000.00
Candidates for nomination for congress, an amount not exceeding -----	800.00
Candidates for nomination for district judge, an amount not exceeding -----	500.00
Candidates for nomination for state senator, an amount not exceeding -----	250.00
Candidates for nomination for representative to the legislature where the district is larger than one county, an amount not exceeding -----	250.00

less than one hundred or more than two thousand dollars and shall be confined in the county jail in the county in which he was convicted for not less than six months nor more than two years.⁵⁷ The provisions of the law in respect to the expenditure of money apply as well to independent candidates as to others.⁵⁸ A section of the constitution (Art. IX, Sec. 40) and lengthy sections of the election laws⁵⁹ are devoted to prohibiting corporations from making contributions to any campaign fund, and from endeavoring to control the votes of employees or others in any manner.

THE PARTY

In order to maintain party identity, at a primary election, there must be cast for each state, district, or county office or for the United States Senate or for Congress,

Candidates for nomination for any office in which the electors of a single county vote, an amount not exceeding -----	200.00
Candidates for nomination for any office in which the electors of a single district or subdivision of the county vote, an amount not exceeding -----	50.00
Candidates for nomination for mayor in cities of 15,000 or more population, an amount not exceeding ----	200.00
Candidates for nomination for judge of the superior court, an amount not exceeding -----	200.00
Candidates for nomination for other offices of cities of like population, an amount not exceeding -----	150.00
Candidates for nomination for mayor in cities of less than 15,000 an amount not exceeding -----	100.00
Candidates for nomination for other offices in such cities, an amount not exceeding -----	50.00
The above limits of expenditure are generally considered to be impracticably low.	

⁵⁷R. L. 1910, Sec. 3051.
⁵⁸Ibid. Sec. 3053.
⁵⁹Ibid. Sec. 3138.

of the political party of which any person is a candidate for nomination, at least twenty-seven per cent of all the votes cast for the candidate of such political party for governor in the state, "or in such district or county at the next preceding general election at which the Governor of the state was elected * * *" This law does not apply to candidates for township or school district offices, or candidates for office in cities of the first class, or in towns, or to candidates for presidential electors; and does not apply to any political party having had no party organization in the state at the general election next preceding said primary election.⁶⁰

CRITICISM OF THE PRIMARY SYSTEM

The primary election laws of Oklahoma are based upon the theory that the party system of nominating candidates and working to secure their election is the best method of popular government; and that, by and large, the two-party system is preferable to a division of allegiance among several parties. Therefore, the party which happens to be in power in the state senate is placed in control over all elections, down to the remotest precinct; the party which leads the opposition receives minority representation upon election boards and among other election helpers, such as counters; while independent voters and members of smaller parties receive no representation, except as they are permitted to have watchers at each precinct.

The fact that the same ticket must be voted at the primary election for all officers means that one's local vote must be influenced by one's preferences for state officers. This keeps the party ranks in good order; but it

⁶⁰Bunn. Supp. 1918, Sec. 3055 a; S. L. 1915 Ch. 169.

means, together with the other requirements of the primary election law, that no matter how corrupt the party leaders may become in any city, a fusion or reform municipal party to overthrow them and establish clean government is almost impossible. Even if a few persons could be found with courage and independence enough to change their registration certificates three months before the primary election in order to establish a new political party in the city, at the cost of losing their vote in the county, state and congressional primaries, the majority of persons would not make this sacrifice, and would certainly vote with their party at the primaries. The psychological effect of this action is, of course, to incline them to vote with their party again at general elections. So, for good or ill, party regularity nearly always prevails.

In the case of *Mitchell v. Carter*, 31 Okla. 592, the question arose as to whether or not a provision of a city charter requiring a non-partisan ballot was in conflict with the general primary law of the state. "It was clear, said the court, that it was an obligation of the legislature to create a primary system for the nomination of candidates for office in all municipalities, including those operating under freeholder's charters, although no legislative obligation was provided by the constitution in respect to the election of municipal officers. For the purpose of providing a primary system, the people of a city, in framing and adopting a charter, could not be regarded as within the meaning of the term 'legislature' as employed by the constitution. Otherwise it would result that the city could 'provide for the nomination of all candidates in all elections for state, district, county and municipal officers'; and this would be to recognize the competence of a home rule city to 'leg-

islate not only upon purely municipal matters, but also upon purely state matters.' In other words, although the regulation of municipal elections was strictly a local affair, yet because of an express declaration of the constitution the regulation of municipal nominations was taken out of the hands of home rule cities and vested in the state legislature. This ridiculous situation obviously resulted from the carelessness of the framers of the constitution.'⁶¹

Experience has shown that, whatever may be said in favor of the closed primary as a method of nomination for state offices and seats in congress, its operation should exclude nominations for purely municipal offices, where partisan politics can do nothing but harm; and possibly even for county offices. The only excuse for Democratic or Republican sheriffs or mayors or city clerks or county superintendents of schools is party regularity; and this should not be permitted to interfere with the need of choosing the best candidates for local administrative offices, regardless of political affiliations. Unfortunately, as the court decision quoted in the preceding paragraph demonstrates, an amendment to the state constitution is needed before non-partisan municipal primary elections can be established in Oklahoma.

Several home-rule cities, however, including Okmulgee, Muskogee, and Ponca City, have provided in their charters for non-partisan primary elections; and there are no recent cases contesting the validity of such provisions.

Even in respect to nominations for state offices and seats in Congress, however, there is a very strong feeling among the most intelligent voters of the state that the primary system has not accomplished what its proponents believed it would. Experience has demonstrated

⁶¹McBain, H. L., *Municipal Home Rule*. pp. 584-585.

that it has some serious faults. These may be said to be:

1. The right of anybody and everybody to file as a candidate makes for the disruption of the party by internal quarrels. Many Democrats believe that one good reason for the defeat of the Democratic party in Oklahoma during the campaign of 1920 was the bitterness caused among the members of the party by the Gore and Ferris primary campaign.

2. The primary system sometimes eliminates from the race the best candidate for nomination, since all other contestants will do their best to injure the chances of the strongest man. This means that primary campaigns become so bitter and so venomous that the best men will refuse to file nominations, whereas they would run in a regular election if nominated by a convention.

3. While, theoretically, the closed primary makes for party responsibility, practically there is no responsibility. Under the present primary system, it is only individual partisan voters who are responsible for a nomination, and not the party as a whole. A candidate may file on his own responsibility, with the backing of his friends, or he may be induced to file by the party "bosses," who work to "deliver" as many votes as possible to him; but in neither case is he the recognized choice of his party. As a plurality of votes is sufficient to nominate, it may frequently happen that the man chosen in the primary election to run as the candidate of his party in the general election has received only a small fraction of the votes actually cast.

4. Again, a primary campaign takes an enormous amount of time, from the candidate himself, those who actively support him, and those who consider it their

patriotic duty to listen to him. Not only this, but the expense of the primary campaign is very large, increasing, of course, with the size of the constituency. It is commonly understood, for instance, that no one can hope to run successfully for governor of Oklahoma or for United States Senator from this state without having financial backing in some way or other to the extent of at least one hundred thousand dollars. Dollar for dollar the money thus expended must be repaid either in the form of appointments to office, favors, or grafts. This means that even before a governor enters office he is either bankrupt or else he is bound hand and foot by promises. The expense to the taxpayers of a double election is also very great, and it is a fair question whether the results justify it.

That there is quite a strong feeling against the primary system in Oklahoma is shown by the fact that a committee on the state constitution, appointed by the state central committee of the democratic party, submitted at a meeting of the latter committee of July 27, 1921, a plan for a "statewide conference" of the Democratic party, which should select, in election years, the party candidates for office. According to this plan, conferences were to be called in each county for the purpose of endorsing candidates for local offices. Delegates to these conferences were to be elected by the Democratic voters of each precinct and the county conferences were, in turn, to elect delegates to a state-wide conference which should endorse party candidates for state and Congressional offices and should determine questions of

⁶²This plan is closely related to the scheme set forth by Dr. Ralph S. Boots in his article, "A New Type of Direct Primary," *National Municipal Review*, Sept. 1919; and to the plan outlined for purposes of discussion by the Committee on Electoral Reform of the National Municipal League (of which Dr. Boots is secretary), in the *National Municipal Review*, Dec. 1921.

party policy.⁶² Opposition to the plan was so strong that it could not be adopted at the meeting of the state committee. The sentiment for it had sufficient force, however, to make necessary the compromise of passing it on to county conventions for certification or disapproval, where it was finally killed. It seems certain that the present primary system is not giving satisfaction. Two ways of reform are advocated; either to change the primary law in such a way as to correct the abuses that exist at the present time, or else to go back to a convention system under quite strict legal regulation.

GENERAL ELECTIONS

General elections are held on the first Tuesday, succeeding the first Monday of November in even numbered years. The ballots include candidates for seats in Congress, and "successors to all state, district, county, township, municipal, or precinct offices, whose terms expire before the next succeeding general election." At every alternate general election, also, electors of the President and the Vice-President of the United States are chosen. In case a vacancy has occurred in any office, and someone has been appointed to fill this office until the next general election, his successor is chosen at this time.⁶³

The county election board is charged with the duty of securing a suitable room in which to hold the election, and of placing therein a railing to separate the election board from the remainder of the room, and from two to five booths "so arranged and constructed that all the members of the election board can see whether or not

⁶³R. L. 1910, Sec. 3056.

more than one voter is in such booth at any one time.”⁶⁴ A fifty-foot passage must be arranged, made by a railing, rope or wire on each side, leading to the polling place.

The state election board contracts for all ballots for state offices and the county election board contracts for ballots for county and local offices. “Election boards shall have full authority, within their jurisdiction, to contract for all necessary supplies and ballots, and to certify all accounts incurred therefor. County boards shall certify the time and compensation due by law to members of election boards and official counters to the board of county commissioners of such county, who shall audit and allow said account * * * and issue warrants of the county to pay the same out of the county treasury.”⁶⁵ The secretary of the state election board certifies to the auditor of the state, and the auditor issues warrants which are paid “out of any moneys in the State Treasury not otherwise appropriated.”⁶⁶

Careful and minute regulations are laid down by law in regard to election supplies. The form of ballot is prescribed, as is the arrangement of names on the ballot for a primary election. The requirement here is that the names shall be arranged differently on different sets of ballots, so that each one appears first, second, etc., an equal number of times with every other. Specifications are given for the ballot box, and the law even provides for the supplying of each precinct with needles and twine for threading ballots, sealing-wax, pens, pen stocks, pencils, and “one small bottle of ink.”⁶⁷ The

⁶⁴R. L. 1910, Sec. 3098.

⁶⁵Bunn Supp. 1918, Sec. 3097, S. L. 1910-11, Ch. 106, Sec. 10.

⁶⁶Ibid.

⁶⁷R. L. 1910, Ch. 29, Art. III.

inspector of the precinct election board is required to examine the election paraphernalia on hand in his district, such as boxes, rope or wire, etc., and to report any shortage to the county election board "in due time preceding each election." The county board secures the missing material and gives it to the precinct inspector when he receives the ballots and other supplies.⁶⁸

CONDUCT OF ELECTIONS

All elections are opened at eight o'clock in the forenoon and closed at six in the afternoon, except in cities of the first class, where they open at six in the morning and close at seven in the evening.⁶⁹ Before the polls open, the inspector of elections opens the ballot boxes and in view of all persons present turns them upside down to show that they contain no ballots; after which demonstration he locks them and hands one key of each box to the judge and one to the clerk, unless these officials belong to the same political party; in which case he retains one set of keys and hands the other to an election officer of a different party.⁷⁰

Electors are admitted to the enclosure where the election officials are stationed, in the order in which they present themselves; but at no time are more electors permitted to be within the enclosure than "one for each booth and one other."⁷¹

As each voter enters, he announces to the election clerk his name, and in cities of the first class, his street number. The clerk writes this information upon the

⁶⁸Ibid.

⁶⁹R. L. 1910, Sec. 3123.

⁷⁰Ibid, Sec. 3124.

⁷¹R. L. 1910, Sec. 3125.

stub of the ballot, and adds, if necessary, the words "challenged," "sworn," or "spoiled," in spaces provided. "In all elections, any candidate shall have the right to have a challenger, if appointed by him in writing, stationed outside the enclosure, but in view of the entrance, and of the election officers, and such challenger shall have the right to question any elector, and to challenge his right to vote if he so desires, and when an elector is so challenged he must subscribe to the oath provided for challenged voters, or else he shall not be allowed to vote."⁷²

If any election inspector or challenger should challenge the right of any person to vote, he must make affidavit in writing that he is a qualified and legal voter of the precinct, giving certain prescribed information and naming two persons who have personal knowledge that he has met residence requirements. The elector is then allowed to vote unless the election inspector or challenger makes affidavit in writing that he knows or is informed and believes that the person challenged is not a legal voter of the precinct. This shall disqualify the elector from voting, unless an elector of the precinct who has been a freeholder in the precinct for at least one year next preceding the election makes affidavit that he has personal knowledge that the person challenged is a legal voter of the precinct.

The right to challenge electors, like the right to demand registration certificates, is capable of doing much good if properly exercised, but much harm if used for improper purposes.

When a voter has received a ballot from the election clerk, he retires into a booth and stamps it with a stencil which he finds there bearing the figure X. At general

⁷²R. L. 1910, Sec. 3128.

elections, a stamp in the circle under the device of any party is a "straight" vote for that party. In primary elections, of course, the stamp must be placed by the name of each individual for whom the elector desires to vote; and the same thing is true in general elections when it is not desired to vote a "straight" ticket. If a voter is physically unable to stamp his ballot, it may be stamped for him by two of the precinct election officers, of different political parties, after the voter swears to his inability. No suggestion may be made by the election officials as to the elector's choice of candidates; and all electors except the election officials must be kept at such a distance that they will not know for whom the infirm elector voted. A penalty is provided for the misdemeanor of any election official who deceives such an elector and causes him to vote otherwise than as he wishes.⁷³ An extraordinary feature of the election law is that it provides no method of helping an illiterate voter to stamp his ballot in general elections though illiteracy does not disqualify any person from voting. In fact, the adoption of the "grandfather clause," which was declared unconstitutional by the federal courts, showed clearly that the people of the state do not desire to make illiteracy a disqualification, except in the case of the negro race. It is surprising, under these circumstances, that the law does not cover the contingency which may frequently arise, of an illiterate voter's requesting help in marking his ballot. The claim is sometimes made that the failure to provide this help is deliberate, and that it constitutes a literacy test, which acts in effect to make the negro vote negligible.

⁷³R. L. 1910, Sec. 3126. In primary elections the judges may assist an illiterate voter to mark his ballot. R. L. 1910, Sec. 3039.

If any elector spoils or mutilates his ballot while marking it, he returns it to the election officers and destroys it in their presence. The clerk writes in his book upon the stub of the destroyed ballot the word "Spoiled" and gives the voter another ballot, upon the stub of which he writes, "Duplicate of Number----", giving the number of the stub of the destroyed ballot.

When the ballot is marked it is folded by the voter in such a way that the markings do not show, but the number corresponding to the stub number is exposed. Upon the return of the ballot to the election officials the number is detached from the ballot, and the ballot is deposited in the official ballot box. "No person shall, within the election enclosure, disclose to any officer or to any person how he voted, nor shall any elector expose his ballot to anyone."⁷⁴ Electioneering or congregating within fifty feet of the polls is forbidden.

Special provisions are made for various contingencies, such as the refusal of a party candidate to run, or his death, or his withdrawal from any other cause. The party may select another candidate whose name shall be printed on the ballot used at the general election; or, if it is too late for this, "stickers" with the new candidate's name may be attached to the ballot.⁷⁵

Another contingency is the failure of the proper officials to bring election supplies to the polls at the proper time. This is met by the provision that ballots may be prepared in writing and cast in a box to be prepared for the purpose; and such ballots shall be counted and considered, "provided, the interest of the elector is made apparent."⁷⁶

⁷⁴R. L. 1910, Sec. 3135.

⁷⁵Ibid. Sec. 3116.

⁷⁶Ibid. Sec. 3129.

The failure or inability of various election officials to serve is met by special provisions for securing substitutes. The compensation of all officials who are entitled thereto is fixed by law. Section 3137 of the Revised Laws of 1910 provides that all employers shall give their employees time to vote on election day.

COUNTING THE VOTE

On the Friday preceding an election, the precinct election boards meet to appoint four official counters, "who shall be electors of the precinct, and who shall be good penmen, and rapid in figures. Such counters shall be equitably distributed from the various political parties, but in no event shall more than three of them be from any one party, unless it is impossible to find a capable man to represent the minority party."⁷⁷

These counters go to the polling place on election day and are sworn in the form of oath prescribed for precinct election boards. After they cast their ballots, they receive the ballots which have been cast up to this time. One of those calling takes out the ballots singly from the receptacle, and announces first the name of each office voted for, and second the name of the candidate for whom the vote was cast. The other scrutinizes the ballot as the call is made and corrects any error immediately. He receives the recorded ballot and threads it upon a twine string. The other two counters keep records upon official tally sheets, "each one recording upon a different sheet at the same time * * * The record of the vote shall be kept by the familiar method of a tally on every fifth vote."⁷⁸ At primary elections, the ballots of each political party are filed upon a string **by**

⁷⁷R. L. 1910, Sec. 3077.

⁷⁸Ibid. Sec. 3080.

themselves and a separate tally sheet is kept for each party.⁷⁹

The official count of the election must be made within view of the election officers, but no information shall be given to said officers or to any other person as to the result of the count. No person except official watchers may approach within thirty feet of the place where the count is being made, except those in the act of voting.

The counters must not hold communication with any person after the count begins, until the polls close, except through the election inspector; and communication with the inspector shall not relate to the result of the count.⁸⁰

As the callers announce a vote "the enumerators shall call the numbers aloud, keeping check on each other." The final results, properly certified, signed, and sworn to, are to be announced by the posting of one of the five duplicate certificates which are made out to correspond to the certificates in the back of the ballot book. Another duplicate certificate is retained by the inspector of elections, one is filed with the county clerk, and the other two, which constitute the returns, are sent to the county election board.

Each candidate for nomination in a primary election may name a person to act as watcher at each or any precinct and commission him in writing. Each political party may name, and commission in writing through its county or city committee, a watcher at each or any precinct in any general election. The watchers are put under oath to observe the same rules prescribed for counters; and they are then allowed to watch the prog-

⁷⁹Ibid. Sec. 3081.

⁸⁰Ibid. Sec. 3082.

ress of the count, to note and record any objections to the count and to challenge the result thereof, and to insist upon an honest and fair count.⁸¹

The following rules are laid down for the counting of ballots:

“Should a ballot be stamped in primary elections in the square before the names of two or more candidates for the same office, such ballots shall not be counted for any of said candidates, but shall be counted for all other candidates where it is apparent as to the person for whom the elector intended to vote. In general elections, ballots stamped under the device of more than one party, shall not be counted; ballots in general elections, when stamped under the device of a political party and in the square in front of names of individual candidates of another party, shall be counted for the candidates of the party under the device of which a stamp is, except it shall be counted for the candidates of the other party for whom the elector stamped in the square opposite their names. Ballots bearing any mark as a distinguishing mark shall not be counted. Any ballot, marked or stamped as above described, may be challenged by any official counter, and when a ballot is so challenged, the counter who questions the regularity of the ballot shall endorse upon the back of such ballot, with pen and ink, in a brief way, the reason why he challenged such ballot, and shall sign such statement. If such ballot be only challenged as to a portion of the names voted for, said statement shall so mention, giving the names as to which it is challenged and such ballot shall be counted

⁸¹Bunn, 1918, Sec. 3084.

and recorded only for the names and candidates in regard to which it was not challenged.”⁸²

When the official count is completed, the ballots are tied together with the twine on which they are strung, the ends of which are fastened in a hard knot. The knot is sealed with sealing wax and stamped with the election seal of the precinct, by the precinct board, in the presence of the counters.⁸³ Challenged ballots, and unstamped or mutilated ballots, are strung upon a separate thread after they have been endorsed as above described. They are tied and sealed as are the other ballots.

Among the election supplies for each precinct are three large linen envelopes, one of which receives the voted ballots, the tally sheets, and the stub book of ballots; one of which receives the challenged and mutilated ballots; and one of which receives the two duplicate copies of the certificate of results, which are the official returns of the election. Each envelope is plainly marked to show what material should be placed in it. The gummed flaps of the envelopes are moistened and sealed; then each envelope is sealed with sealing-wax, which is stamped with the precinct election seal. These preparations are made by the official counters.

Each envelope is then endorsed by the clerk and the judge of the election; and the inspector places the envelopes in the ballot box, in the presence of the other members of the board and the counters, and locks the ballot box securely. The box shall remain undisturbed until delivered to the secretary of the county election board.

⁸²R. L. 1910. Sec. 3086.

⁸³Ibid. Sec. 3085.

The county board shall canvass the returns, which are then replaced in the envelope and put back into the ballot box. They shall not disturb the other contents of the box; but when they have replaced the envelope containing the returns, the ballot box is to be "locked and retained by the secretary of the county election board until opened by order of court or until it shall be necessary to open the same for use at the next election, at which time the ballots shall be destroyed, provided, that in no case shall the ballots be destroyed until ninety days after the election at which they were cast."⁸⁴

Despite the provision of the primary election law⁸⁵ that "all contests arising out of primary elections shall be settled and decided in the same manner as is now or may hereafter be by law provided for general elections, except as herein otherwise provided", no specific remedy has been laid down in the general election law for the settlement of contests or disputes. As a matter of fact, such contests are decided by the courts according to regular procedure. Thus, it has been held: "Where the certificate of returns has not been executed by the officers of an election precinct, as prescribed by section 3084, Rev. Laws 1910, and where the ballots have not been kept by the precinct officers and preserved for delivery to the county election board in the manner prescribed by the statute, and such ballots have been so exposed as to afford an opportunity and a reasonable probability of their having been changed or tampered with, parol evidence of the judge of the election of such precinct as to the result of the election in that precinct, as shown by the tally sheets at the close of the count of ballots, and parol evidence of bystanders

⁸⁴Bunn, 1918, Sec. 3088, S. L. 1910-11, Ch. 106, Sec. 8.

⁸⁵R. L. 1910, Sec. 3054.

as to the result declared by the election inspector, or shown by a statement made by him at the close of the count, is admissible.

“* * * Where such parol evidence * * * conflicts with the result as shown by the ballots, which have been handled in such irregular manner by the precinct election officers as to afford a reasonable probability of their having been changed or tampered with, whether such ballots are the identical ballots as cast by the voters, and what was the result of the election in said precinct, are, under all the evidence, questions of fact for the jury or for a court sitting as a trier of the facts.”⁸⁶

Lack of space prohibits the citing of the many other examples of the fact that ordinary judicial procedure is resorted to, in the absence of a specific remedy for election contests, embodied in the election laws.

Article VII of the election laws⁸⁷ is devoted to defining offenses against the purity of elections or the proper conduct thereof, and to fixing penalties for such offenses. Throughout the election laws, however, numerous provisions of the same nature appear. It is hardly necessary to discuss these provisions in detail in this work.

Provision is made by law for the holding of special elections to fill vacancies in certain offices, to vote upon bond issues, etc. These are conducted by the election boards in the same manner as general elections.

Elections on bond issues for schools are conducted by the school board or by any three persons chosen by the

⁸⁶Syllabus by the court, in the case of Moss v. Hunt, 40 Ok. 20, 135 Pac. 282.

⁸⁷R. L. 1910.

bystanders. Special provisions are laid down for such elections.⁸⁸

MUNICIPAL ELECTIONS.

A law of 1919⁸⁹ provides that all cities of the first class shall hold general elections on the first Tuesday in April, A. D. 1919, and each two years thereafter, for the purpose of electing a mayor, a city marshall, a street commissioner, a city clerk, a city treasurer, and a treasurer of the city school board. The foregoing officers are to be elected from the city at large; and in addition, a councilman is to be elected from each ward. These officers serve for two years, and until their successors are elected and qualified. Charter cities are exempted from these provisions.

An earlier law⁹⁰ provides that cities which have adopted a charter form of government, "and in such charter have provided or shall hereafter provide for the election of different officers * * * or * * * a different time or manner for the election of the elective officers," may, notwithstanding the general law covering municipal elections, elect officers "at the time and for the term provided by such charter." The conduct of elections is made subject to the provisions of the election laws relative to other cities and towns, and is controlled by the state and county election boards.

SUMMARY AND CONCLUSIONS.

Our survey of the election laws of Oklahoma has revealed some meritorious features and some grave faults and deficiencies. The requirement that voters shall be

⁸⁸R. L. 1910, Sec. 7837.

⁸⁹Ch. 43, S. L. 1919.

⁹⁰Bunn's Supp. 1918, 437, S. L. 1910-11, Ch. 136.

registered is in itself a valuable safeguard against fraud; even though, as we have seen, it may be misapplied and used to prevent properly qualified persons from voting. An improvement upon the present method of requiring the registration certificate to be presented upon application for a ballot has been proposed by certain students of governmental problems. They suggest that the voter should be required to sign his name in the registration book, and to sign again beside the previous signature, when he applies for a ballot. This simple requirement, if properly administered, would serve as an almost certain means of identification, as the business world knows from long experience with "travellers' checks" and similar documents. Of course such requirement presupposes the ability to read and write as a prerequisite to the exercise of the franchise. There is no literacy requirement in Oklahoma, and a constitutional amendment would be necessary before such qualification could be imposed.

It is an open question whether the right to challenge voters, as bestowed by the election laws of Oklahoma, does more harm than good. It can be used, and undoubtedly it has been used, to prevent properly qualified persons from voting. In the *National Municipal Review* for December, 1921, the excellent suggestion is made that general challenges, by others than the election officers, shall be made at the time of registration rather than at the election itself. "The challenged person should be compelled to answer appropriate questions under oath or affirmation and satisfy election officers, who should verify answers of applicant. If applicant refuses to answer questions under oath or affirmation he should be arrested. If registration is denied ap-

plicant he will have the right of appeal to the courts." The registration lists should be closed at least thirty days before the election, and published at once. "A reward of, say, \$100.00, should be offered for the presentation of evidence leading to the conviction for false registration of any person whose name appears on the list."

Under such a system, the possibility of occupying so many hours with challenges and affidavits that the polls are closed before the challenged person can vote—a practice not unknown in Oklahoma—would be absolutely removed; while, at the same time, all the safeguards of the present system would be preserved. Of course an unprincipled election officer could still refuse a ballot on the ground of some fancied irregularity in the registration certificate, or of lack of correspondence between signatures, if the signature method of identification were used; but even with this possibility remaining, the proposed change would do much to bring about the ideal set forth in the constitution of Oklahoma⁹¹ which declares:

"The election shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage."

As we have already seen, the primary election system of Oklahoma is not working satisfactorily. The first improvement needed is a constitutional amendment permitting cities and towns, and perhaps even townships and counties, to nominate local officers in a non-partisan primary. Various other improvements might well be made, in order to remedy the defects which were described earlier in the chapter.

A great defect of the Oklahoma election laws is their

⁹¹Article III, Sec. 7.

lack of logical arrangement, consistency, and completeness. Many things are omitted which have to be guessed, or deduced from the context. At the same time, the laws are encumbered with a multitude of details as to supplies, procedure, etc., which probably should be omitted altogether. Of course, regulations are necessary in order to prevent wasteful use of supplies and improper conduct of elections; but these should be laid down by the state election board as administrative rules. The election laws should be re-arranged, condensed, clarified, simplified, and made complete and consistent. Much of the material now included in them should be omitted, and many details now settled by the legislature should be regulated by the state election board.

CHAPTER VIII

THE INITIATIVE AND REFERENDUM

CONSTITUTIONAL AND STATUTORY PROVISION

The purpose of this chapter is not to enter upon an academic discussion of the merits or defects of the initiative and referendum. From this standpoint the initiative and referendum have been treated so thoroughly and at such great length that any further discussion would be a mere repetition. Political campaigns have been waged upon the basis of their efficacy. We shall therefore confine the present discussion to the operation and practical results of the initiative and referendum in Oklahoma.

The initiative and referendum were incorporated in the constitution of Oklahoma, which was adopted in 1907. From that day until this they have been a part of the organic law of the state. While Oklahoma's experience in state government is brief in comparison with the decades during which most of our American governmental institutions have developed, yet in view of our rapidly changing political and social life, the experience of a new state during a few years of operation of a new form of government may furnish many interesting revelations to guide the footsteps of a rapidly progressing people.

Oklahoma was not the first in this field of popular government, as her action was antedated by similar action in other states. The practice on the part of legislatures and constitutional conventions of submitting legislation and governmental policies to the people for

their approval or rejection is an old one; but only in recent years has it come to include every form of legislation. Of the twenty-five states that framed their constitutions prior to 1801, in only three of the states were the constitutions submitted to the people.¹ But as time went on the practice of popular submission became a common one, until at the end of the nineteenth century only five states were governed by constitutions not submitted to the referendum.² After the constitutional referendum had been firmly established as a constitutional practice, amendments to state constitutions were referred to popular vote, first by Connecticut in 1818. This led to a referendum upon statutory questions such as the location of the state capital, Texas being the first state to take such action in 1850.³ To this was added popular vote upon the sites for public institutions, as state universities and eleemosynary institutions; and it was only a short time until the field of popular submission was extended to include statutes respecting limitations of state debts, taxation and finance, and such questions as the regulation of intoxicating liquors.⁴ Then came the modern referendum, which includes every form of legislation. But the phase of the referendum which has been most strongly emphasized, in recent years, is the power by which the people can by petition demand a submission of any legislative

¹Constitution of Massachusetts (1780): Constitution of New Hampshire (1783). Pennsylvania held a referendum vote as to the calling of a constitutional convention. See W. B. Munro, *Government of the United States*, p. 411.

²Mississippi (1890), Kentucky (1891), South Carolina and Delaware (1895), Louisiana (1898). See E. P. Oberholtzer, *The Initiative, Referendum and Recall in America*, pp. 120-127.

³*Ibid.*, p. 176.

⁴*Ibid.* pp. 182 ff.

measure for their approval or rejection. It is this phase of the referendum that we shall consider.

By the initiative is meant the power reserved to the people to propose and enact statutes and constitutional amendments independently of the legislature. This practice, which is of Swiss origin, made its appearance in America in the closing years of the nineteenth century and first decade of the twentieth century. Its expansion was slow and restricted entirely to western states. South Dakota was the first state to adopt it, incorporating it in her constitution of 1898.⁵ Utah followed in 1900, Oregon in 1902, with wider application, Nevada in 1904, Montana in 1906 with certain restrictions, and Missouri in 1908.⁶ By this time the states which had adopted the initiative had passed through several interesting experiences in its application. Several political parties became ardent supporters of this innovation in political science. So the stage was all set when Oklahoma in the fall of 1907 made its entrance into the sisterhood of states with a constitution providing for what Mr. Bryce has called the extreme of modern tendencies in government.⁷ Many of the provisions of the initiative and referendum in the Oklahoma constitution are taken substantially from the Oregon constitution and have been given the same construction by the supreme court of this state.⁸

Section one of article five of the Oklahoma constitution, after stating that the legislative authority shall be vested in a legislature consisting of a senate and house

⁵Bacon, *Direct Election*, p. 20.

⁶Oberholtzer, *op. cit.* pp. 391 ff.

⁷James Bryce, *The American Commonwealth*, Vol. 1, p. 492.

⁸*Ex parte Wagner*, 21 Okla. 33, 95 Pac. 435; *Norris et al. v. Cross*, 25 Okla. 287.

of representatives, reserves to the people the power to propose laws and amend the constitution and to enact or reject the same at the polls independently of the legislature, and also reserves to the people the power to approve or reject at their own option any act of the legislature. However, by section seven, article five, the legislature is not deprived of the right to repeal any law, propose or pass any measure not contrary to the constitution of this state or the constitution of the United States. No sooner had the constitution gone into effect than the validity of these provisions was attacked on the grounds that they were contrary to section four, article four, of the Federal Constitution which guarantees to every state a republican form of government. It was decided by the supreme court of this state that the provisions were not in violation of the Federal Constitution,⁹ relying solely upon a prior decision of the Oregon supreme court by which it was contended that, while greater power had been given the people in initiating laws and demanding the referendum on others, the power of the legislature as a governing body still remained intact.¹⁰ An appeal in a similar case was dismissed by the United States supreme court for want of jurisdiction upon the grounds that it was a political and not a judicial question.¹¹

The first power reserved to the people, that of the initiative, enables eight per cent of the legal voters voting at the last general election, by signing a petition properly drawn, to propose any legislative measure, and fifteen per cent to propose any constitutional amendment. Such

⁹Ex parte Wagner, 21 Okla. 33, 95 Pac. 435.

¹⁰Kadderly v. City of Portland, 44 Oregon 118, 74 Pacific 710.

¹¹Pacific States Telephone and Telegraph Co. v. Oregon, 223 U. S. 118.

petition must contain a full and exact copy of the measure proposed.¹²

No restrictions are imposed as to what measures may be proposed. Although the question has never been raised in Oklahoma it is generally conceded that a proposal which is merely legislative in its nature is subject to constitutional restrictions¹³ and cannot under the guise of a constitutional amendment be made to evade the constitution.¹⁴ It is doubtful whether this doctrine would be held valid in Oklahoma, where the constitution is filled with provisions statutory in their nature. This means that there is no distinction in the constitution between what is fundamental and what is statutory. It is evidently not the fact that a law is fundamental in nature that makes it constitutional in this state, but the method by which it is passed. If it is passed in the manner prescribed for the passing of constitutional measures it becomes a part of the constitution irrespective of its nature.

The power of the people of the state under the initiative is extended to the voters in any municipality, county or district therein, as to all local legislation or action, but the number of petitioners must be twice the number required on state questions, except that in municipalities the petition shall contain the signatures of twenty-five per cent of the voters voting at the last municipal election.¹⁵ The citizens of a municipality may initiate a measure granting a franchise to a corporation and if such franchise is approved by a majority voting there-

¹²Art. V, Sec. 2, Constitution of Oklahoma.

¹³State ex rel. Gibson et al v. Richardson 48 Oregon 309. See also 50 L. R. A. (N. S.) page 205 note.

¹⁴State ex rel. Halliburton v. Roach 230 Mo. 408.

¹⁵Const. Art. V, Sec. 5.

on, a writ of mandamus will be issued compelling the city council to issue the same.¹⁶ But a license permitting the operation of a private business can not be enacted under the initiative, upon the grounds that the issuance of a license is not a legislative but a judicial question. Whatever might have been the attitude of the court, the distinction is logical in theory, inasmuch as the granting of a license to conduct a private business does not affect the public, while the granting of a franchise to a public service corporation is of public concern. It is not the purpose of the initiative to furnish a redress for private wrongs. Should the charter of a city fail to provide for the exercise of the initiative and referendum, the mayor, city clerk and city attorney shall perform the duties corresponding to those of governor, secretary of state and attorney general, upon state questions.

The validity of an initiated measure will not be passed upon by the courts until first acted upon by the people.¹⁷ These decisions are based on the ground that until the people finally vote upon an act it is still in the process of being made. It is a general rule of law that under the doctrine of separation of powers the courts can not enjoin a legislative authority from passing acts no matter how unconstitutional they may appear to be. The court can only step in after the act has been completed.¹⁸

Those who uphold the court in its attitude point out

¹⁶City of Pawhuska v. Pawhuska Oil & Gas Co. 28 Okla. 563, 115 Pac. 353.

¹⁷Threadgill v. Cross, 26 Okla. 403, 109 Pac. 558. It has also been held that the constitutionality or validity of a proposed initiative measure cannot be challenged in a hearing before the secretary of state. (In re Initiative State Question, 26 Okla. 554, 110 Pac 647.)

¹⁸This point of view finds adequate expression in State ex rel. Cranmer v. Thorson, 9 S. D. 149, 68 N. W. 202.

that discretion would have to be vested either with the secretary of state or the governor of declaring originally that the amendment was or was not in conflict with the constitution of the United States or of the state; thus giving to an individual great power to decide what the people could or could not vote upon. Of course an appeal from this decision would be to the court. The opinion of the secretary of state or governor would have great weight, however, with the court. The court also because of their peculiar economic or political beliefs might well declare a measure deemed inexpedient by them to be unconstitutional.

It may be further argued that the people themselves may vote against the proposed measure on the ground of unconstitutionality as well as other grounds and that therefore the court will never have to decide the question. To lay upon the courts the duty of giving preliminary opinion might mean that the courts could be called upon to anticipate conditions which may never exist.

Finally, in Oklahoma at least, the constitution provides that the people reserve to themselves so much at least of legislative power as¹⁹ is embraced in the right to initiate legislation on any subject.

The argument against this view largely goes on the ground of expediency. On this ground it is argued that submitting a measure to the people which is manifestly unconstitutional involves unnecessary time and expense, since the people may ratify a measure only to have it declared unconstitutional by the courts later on. It is urged that there is no more reason to have a referendum vote upon a measure that later may be declared invalid than for the legislature to enact a law of questionable

¹⁹Art. V, Sec. 1, Oklahoma Constitution.

validity. In several states the enactment of invalid laws by the legislature is more or less prevented by the courts' giving an informal opinion in advance upon a pending measure; why could not the same precautionary method be applied to the initiative and referendum, thereby saving unnecessary expense?

Any measure referred to the people under the initiative shall be in force only when it shall have been approved by a majority of the votes cast in such election—not by a majority of the electors voting upon such measure, as in case of the referendum, but a majority of all votes cast for candidates.²⁰ This requirement of a majority of all votes rather than a majority voting thereon has had an important influence upon the success of many measures, as will be pointed out later. By this provision the silent vote has the effect of a negative vote. This provision has received the condemnation of the friends of popular government.²¹ Submission of an initiated measure must be made at the next general election, but it is within the discretion of the governor to call a special election or to submit the measure at the mandatory primary.²² If the measure is submitted at a special election, a bare majority in its favor will suffice; but if submitted at a general election, a majority of all votes cast is required. The success of many measures has turned upon the kind of election, special or general.

A measure enacted under the initiative is subject to expressed or implied modification or repeal by a subse-

²⁰Art. V, Sec. 3, Oklahoma Constitution.

²¹See Article by J. King, in *Equity*, 1911, p. 14.

²²Sec. 2, Senate Bill No. 4, approved February 25, 1916.

quent legislature.²³ An act passed by the people by virtue of their "sovereign power" may be modified or repealed as the legislature wishes. Not only this, but the legislature may by voting an emergency on its revision of the act or by declaring that a measure is necessary "for the preservation of the public peace, health and safety," make their revision go into effect immediately and it is not subject to a referendum vote. The legislature is virtually left in a controlling position, therefore, in respect to laws initiated by the people. The governor, however, may veto emergency measures, but they may be repassed by a three-fourths vote of each house.²⁴ Furthermore, the governor's veto does not extend to measures submitted to the people. An initiated measure generally becomes effective upon the proclamation of the governor declaring the results of such election; or the measure may contain the date of its becoming effective. The legislature can not set the date; and in case the date is determined in the measure, the legislature may not alter it. If a measure is rejected it can not again be proposed by the initiative within three years, unless by a petition signed by twenty-five per cent of the legal voters.

The second power reserved to the people, that of the referendum, enables five per cent of the legal voters to demand the referring to them of any measure passed by the legislature except those necessary for the public peace, health and safety; or the legislature can upon its own motion submit any measure, providing such ref-

²³State v. Schuler, 59 Oregon 18, 115 Pac. 1057. In re Senate Resolution No. 4, 54 Colo. 262, 130 Pac. 333, but in Stetson v. Seattle, 74 Wash. 606, the city of Seattle was denied the right to alter an ordinance enacted by the people under the initiative.

²⁴Art. V, Sec. 58, Oklahoma Constitution.

erendum is ordered ninety days after the final adjournment of the legislature. Any measure referred under the referendum is in force when approved by a majority of the votes cast thereon.²⁵ The provision granting the right of the referendum has been modified by the construction placed thereon and the exceptions contained in section fifty-eight, article five of the constitution. By that section it is provided that no act passed by the legislature shall take effect until ninety days after the adjournment of the session at which it was passed, except (a) enactments for carrying into effect the initiative and referendum, (b) general appropriation bills, (c) cases of emergency, to be expressed in the act, by a vote of two-thirds of the members elected in each house of the legislature. The laws for carrying into effect the initiative and referendum, general appropriation bills, and any measures declared to be emergency measures, go into effect immediately upon approval by the governor or when passed over his veto.²⁶

Under a ruling of the supreme court of this state, the referendum can be invoked only upon those measures that have not become effective at the time of the filing of the petition; otherwise the section requiring a majority of the votes cast thereon to make it effective would be meaningless.²⁷ Thus all general appropriation bills, bills for carrying into effect the initiative and referendum, and those declared to be emergency measures, are by the saving clause taken out of the ninety day period and become effective at once; and the referendum, not being available against measures already in

²⁵Art. V, Sec. 3, Oklahoma Constitution.

²⁶Norris v. Cross, 25 Okla. 287, 105 Pac. 1000.

²⁷Ibid.

operation, can not be invoked against those three classes of exceptions. However, the constitution establishes further limitations as to what may be contained in general appropriation bills. By section fifty-six, article five of the constitution, a general appropriation bill shall contain nothing but appropriations for the expenses of the executive, legislative and judicial departments, and interest on the public debt. The salary of no officer or employee of the state shall be increased nor any appropriation made in a general appropriation bill for any officer or employee unless his employment and salary shall have already been provided for by law. Creating such an office and declaring its salary must be done by a special bill, and this bill unless declared to be an emergency by two-thirds of the legislature does not become a law until the expiration of the ninety-day period, and is therefore subject to a referendum petition. While a general appropriation bill is exempted from the referendum, no expenditures for the compensation of any officer or employee in the executive, legislative or judicial departments of the state can be contained in such appropriation bill unless it shall have been provided for by a separate law;²⁸ and such a law, unless declared to be an emergency, does not become effective until the end of the ninety-day period.²⁹ When the constitution of the state was adopted, the people ratified the offices provided therein, and provision for their compensation can therefore be included in a general appropriation bill.³⁰

Section fifty-eight of article five of the constitution provides that the legislature can declare an emergency

²⁸Art. V, Sec. 56, Oklahoma Constitution.

²⁹Bryan v. Menefee, 21 Okla. 1, 95 Pac. 471.

³⁰Ibid.

on such measures as are immediately necessary for the public health, peace or safety. Whether or not a measure comes within the emergency clause is left wholly to the determination of the legislature, and should the legislature wrongfully or maliciously declare an emergency such declaration is, nevertheless, conclusive upon the courts;³¹ but the section further provides that an emergency shall not include: (a) the granting of a franchise or license to a corporation or individual to extend longer than one year, (b) provision for the sale of real estate, or (c) provision for the renting or encumbrancing of real property for a longer term than one year. When a proposed statute comes within this limitation the emergency clause cannot be enforced.³² Thus a statute providing that the paving should constitute a lien against the property for ten years, since it creates an encumbrance longer than one year, is exclusive of the emergency clause and not effective until the end of the ninety-day period.³³ Likewise an emergency can not be declared upon bonds authorized by the legislature for a period of ten years.³⁴ Wrongfully declaring an emergency does not invalidate the statute, but delays the day of its becoming effective until the end of the constitutional period.³⁵ A referendum petition can be invoked only against a legislative and not an administrative act. For example, an order of the county commissioners directing the county clerk to advertise for

³¹Oklahoma City v. Shields, 22 Okla. 265, 100 Pac. 559; Brown v. State, 3 Okla. Cr. 475, 106 Pac. 975; Kadderly v. Portland, 44 Oregon 118, 75 Pac. 222.

³²In re Menefee, 22 Okla. 365, 97 Pac. 1014.

³³Oklahoma City v. Shields, 22 Okla. 265, 100 Pac. 559.

³⁴Riley v. Carico et al., 27 Okla. 33, 110 Pac. 738.

³⁵Ibid.

bids for the construction of a bridge is an administrative act and therefore not subject to a referendum petition.³⁶ The mandatory elections called under special constitutional provisions for the issuance of bonds or the increase of indebtedness, are not subject to the laws governing the referendum.³⁷

The referendum may be demanded against one or more items of a legislative measure. A referendum against a part will not prevent the operation of the remainder.³⁸ The petition for the initiative or referendum shall be filed with the secretary of state and addressed to the governor, who will submit the measure to the people without the interference of the state legislature.

The provisions of the constitution authorizing the initiation and referendum are not self-enforcing;³⁹ but the legislature is given power to make all necessary provisions for carrying into effect the initiative and referendum. Immediately after statehood the legislature established very definite procedure for the enactment of laws under the initiative and referendum, which was copied largely from the Oregon law, and provides as follows:⁴⁰

The petitions for either the initiative or referendum must be attached to exact copies of the measure upon which the initiative or referendum is sought. The

³⁶Brazell v. Zeigler, 26 Okla. 826, 110 Pac. 1052.

³⁷North v. McMahan, 26 Okla. 502, 110 Pac. 1115; Board of Education of Ardmore v. Best, 26 Okla. 366, 109 Pac. 563.

³⁸Art. V, Sec. 4, Oklahoma Constitution.

³⁹Ex parte Wagner, 21 Okla. 33, 95 Pac. 435; In re Initiative State Question No. 10, 26 Okla. 554, 110 Pac. 647.

⁴⁰Chap. 37, R. L. 1910. Approved April 16, 1908. A referendum petition filed after statehood, Nov. 16, 1907, but before Apr. 16, 1908, was not effective. Ex parte Wagner, 21 Okla. 33.

sheets for securing the signatures must be of uniform size, with only twenty names to the sheet. Each copy of the measure, with the sheets, constitutes a pamphlet. On the outer page of each pamphlet is a warning declaring it a felony for any one to sign other than his own name or to sign the same petition more than once. On the outer page of such pamphlet is an affidavit to be designed by the person circulating the same, to the effect that the signatures are genuine and that the addresses of the signers are correctly given.

After a petition is prepared, but before it is circulated or signed, a copy of the same is filed with the secretary of state; and within sixty days thereafter the original petition containing the list of signatures must be filed or the petition will not be considered. Upon the filing of such petition the secretary of state, in the presence of the governor and the person filing the petition, shall detach the sheets containing the signatures and bind them into one or more volumes. The duty of the secretary of state is ministerial; and a writ of mandamus will be issued in case of non-compliance.⁴¹ The fact that in the secretary's opinion the measure is unconstitutional is no justification for his refusal to file, nor will it constitute a defense in a hearing for a writ of mandamus.⁴² While the supreme court will grant a writ of mandamus it will not pass upon the validity of the measure, as we have already seen. The provisions of the statute

⁴¹Norris et al. v. Cross, 25 Okla. 287, 105 Pac. 1000; Threadgill v. Cross, 26 Okla. 403, 109 Pac. 558.

⁴²Ibid; but contra in State ex rel. Little Rock v. Donaghey, 106 Ark. 56, 152 S. W. 746 and State ex rel. Halliburton v. Roach, 230 Mo. 408, 130 S. W. 689, where the secretary could exercise his discretion as to the validity of the measure and such opinion constituted a good defense in a hearing for mandamus.

imposing a duty upon the secretary are merely directory, and if he retains custody of the petition in his office, the petition is deemed to be filed although the exact terms of the statute have not been complied with.⁴³ When the original petition is filed, the time of its filing will be published; and within ten days after such publication, any citizen by proper notification may protest against the measure's being submitted, whereupon the secretary of state shall fix a day not less than five days thereafter to hear the arguments for and against the sufficiency of such petition. Notice of protest, when filed with the secretary of state, is *ipso facto* notice to all parties concerned.⁴⁴ The validity of a measure can not be questioned in the hearing before the secretary of state.⁴⁵ After proper hearing, the secretary of state shall decide as to the sufficiency of the petition, and his decision shall be subject to appeal within ten days to the supreme court, where it shall take precedence over all other cases. The decision of the secretary will not be overruled nor disturbed unless it can be affirmatively shown that the secretary abused his discretion.⁴⁶ If, however, in the opinion of the court the petition is insufficient, the parties have the right to amend within five days to meet the judgment of the court. An appeal from the decision of the secretary of state to the Supreme Court gives the court power to hear the case *de novo*.⁴⁷ The assumption is that any

⁴³Norris et al. v. Cross, 25 Okla. 287, 105 Pac. 1000.

⁴⁴In re Initiative State Question No. 10, 26 Okla. 554, 110 Pac. 647.

⁴⁵Threadgill v. Cross, 26 Okla. 403, 109 Pac. 558.

⁴⁶In re Initiative State Question No. 10, 26 Okla. 554, 110 Pac. 647.

⁴⁷In re Initiative Petition No. 23, State Question No. 38, 35 Okla. 49, 127 Pac. 862.

petition which is circulated and signed is genuine and the burden is upon the contestants to prove any irregularity. Unless this can be shown conclusively the petition will stand.⁴⁸

Any citizen may maintain an action for writ of mandamus to enforce the performance of a duty, and need show no other interest than that of citizenship;⁴⁹ but to maintain an action for an injunction he must show special damage.⁵⁰ An election under the initiative and referendum can not be enjoined;⁵¹ but an injunction will be issued to prevent the carrying into effect of a measure voted upon without having been legally submitted.⁵²

At the same time the petition is filed with the secretary of state an exact copy shall be filed with the attorney general, which shall contain a "ballot title" not to exceed one hundred words, containing a brief description of the law proposed. If in the opinion of the attorney general the law is in harmony with the title, a fact which he must determine within three days, he notifies the secretary of state, who in turn transmits to the secretary of the election board a copy of the pending measure. If the attorney general does not approve the title he may form a new one. However, if any person is dissatisfied with the new title, he may appeal to the supreme court, which, upon hearing, may correct, or amend the title, accept the substitute, or draft a new one. When the petition has been accepted and the title decided upon, the secretary of state notifies the gov-

⁴⁸Ibid.

⁴⁹State ex rel. Halliburton v. Roach, 230 Mo. 408, 130 S. W. 607. 689.

⁵⁰Libby v. Olcott, 66 Oregon 124, 134 Pac. 13.

⁵¹Duggan v. City of Emporia, 84 Kan. 429, 114 Pac. 235.

⁵²Smith v. State ex rel. Hepburn, 28 Okla. 235, 113 Pac. 932.

ernor, who forthwith shall issue a proclamation setting forth the contents of the measure and the date of the election.

The secretary of state is expected to publish in two newspapers of opposite political faith in each county, arguments for and against the measure, together with the names of the committee preparing the same.

APPLICATION OF THE INITIATIVE AND REFERENDUM.

Oklahoma's first trial⁵³ of the initiative and referendum came at the general election in 1908. At this election there were submitted to the voters five propositions, consisting of three constitutional amendments proposed by the legislature, a law initiated by the people and a unique suggestion submitted by the legislature. The amendments authorized a liquor agency for the sale of intoxicating liquors for certain purposes, the installation of the Torrens System of land titles now in use in Australia and several American cities, and the permanent location of the state capital prior to Jan. 1, 1913 as provided in the Enabling Act. The initiated measure authorized the sale of school lands to homesteaders. The unique suggestion provided for the establishment of a "New Jerusalem," a model capital city to be solely controlled by the state, located somewhere near the geographical center of the state with reference to the "topography of the country, drainage, health, picturesque grandeur, and supply of water," and permitting no steam railroad to enter thereby "marring its beauty." Of the five propositions, four were rejected. The agency bill and the law with reference to the sale of school lands were

⁵³All of the facts herein contained have been taken directly from the official records of the secretary of state of Oklahoma, and from the reports of the Election Board.

defeated by an adverse majority; but the Torrens Land System and the location of the state capital, while receiving a majority of votes, 30,506 and 48,419, respectively, fell short of a majority of all votes cast for candidates. The unique plan took the popular fancy and received a good majority; but was of no legal effect, having been submitted for "advisory purposes only."⁵⁴ There were 250,000 votes cast in the election; and the agency bill, being a liquor issue and always of great interest, attracted the attention of 90 per cent of the voters, while the other measures received from 79 to 83 per cent of the votes cast, as indicated by the following table:

ELECTION OF 1908.

Name of Measure	By Whom Submitted	Yes	No	Majority Approv'g	Majority Against	Pct. Voting
Liquor Agency Bill-----	Legislature	105,392	121,573	----	16,181	90
Torrens Land System---	Legislature	114,394	83,888	30,506 ⁵⁵	----	79
Location of State Capitol	Legislature	120,352	71,933	48,419 ⁵⁶	----	78
"New Jerusalem Plan" ⁵⁷	Legislature	117,441	75,792	41,649	----	78
Sale of School Lands ⁵⁸	By the People	96,745	110,840	----	14,095	83

Measures under the initiative and referendum were submitted at three elections in 1910. At the special election on June 11, two propositions were submitted, both initiated by the people. One was a proposed amendment to section 9, article IX of the constitution. This section prohibited any railroad or transportation company organized under the laws of this state to consolidate with any other railroad organized under the laws of this state, or any other state or the United States. The promoters of several independent lines in Oklahoma sought the repeal of

⁵⁴In re Initiative Petition No. 2, 26 Okla. 548, 109 Pac. 823.

⁵⁵Failed to receive a majority of all votes cast.

⁵⁶Ibid.

⁵⁷Submitted for "Advisory purposes only."

⁵⁸Proposed law.

this section in order to permit them to sell to trunk lines. The second was a proposal to move the capital and vote upon its location either at Guthrie, Shawnee or Oklahoma City. The first measure was defeated by a good majority, while the second proposition carried but was declared illegal by the supreme court.^{58a} Sixty-four per cent of the voters at the last general election voted upon both propositions. At the August primaries was submitted a constitutional amendment initiated by the people, comprising the "grandfather clause" in force in many southern states. This amendment establishes an educational qualification for the exercise of suffrage, but exempts from its applications all those who could vote on January 1, 1866, or at any time prior thereto and the lineal descendants of such persons, thereby exempting the ignorant white but disqualifying the ignorant negro. Owing to the manner in which the amendment was voted upon, it carried by a good majority. At the bottom of the ballot and in small type were printed the words "For the Amendment." To vote against the amendment the voter had to scratch out those words with a lead pencil, and should he leave his ballot unmarked, he was counted as favoring the amendment. In a number of precincts no pencils were furnished and the process was likely to mislead the simple and inattentive voter. The United States Supreme Court, however, declared the amendment unconstitutional.⁵⁹

At the general election in November, 1910, six measures were submitted, comprising four constitutional amendments, the New Jerusalem Plan for a second time, and a referendum against the Bryan Election Law. Of

^{58a}Smith v. State, 28 Okla. 235, 113 Pac. 932.

⁵⁹Guinn v. U. S., 238 U. S. 347.

the constitutional amendments, two were initiated by the people, i. e. the woman suffrage and local option amendments. Those submitted by the legislature were: an amendment providing that all taxes paid by corporations for the maintenance of common schools should be distributed as other school funds; and an amendment to section 9, article IX, permitting railroad consolidation. The amendments were all defeated, two of them by adverse majorities, and the others—the railroad and tax distribution amendments—while receiving a majority of all votes cast thereon, did not receive a majority of all votes cast at the election. The last two amendments received only a little more than fifty per cent of the total votes, while the local option amendment maintaining its usual interest, received ninety-one per cent of the votes. The referendum against the election law failed, as did the plan for the “New Jerusalem,” owing to the fact that a heated contest was now on between Guthrie and Oklahoma City for the capital location.

ELECTION OF 1910.

Name of Measure	By Whom Submitted	Yes	No	Majority Approv'g	Majority Against	Pct. Voting
Amendment to Sec. 9,						
Art. 9 -----	By the People	53,784	108,205	---	54,421	--
Location of Etate Capitol	By the People	96,448	64,522	31,926	---	---
“Grandfather Clause”--	By the People	134,443	106,222	28,221	---	---
Woman Suffrage -----	By the People	88,808	128,828	---	40,120	85
Tax Distribution -----	Legislature	101,636	43,133	58,503 ⁶⁰	---	57
Amendment to Sec. 9,						
Art. 9 -----	Legislature	83,169	55,175	27,994 ⁶¹	---	54
Local Option -----	By the People	105,041	126,118	---	21,077	91
Bryan Election Law ⁶² --	By the People	80,146	106,459	---	26,313	70
“New Jerusalem Plan” ⁶³	By the People	84,366	118,899	---	34,533	80

⁶⁰Failed to get a majority of all votes cast.

⁶¹Ibid.

⁶²Referendum against a legislative measure.

⁶³Proposed law.

The fifth referendum was held in April, 1911, when the legislature for the second time submitted the railroad consolidation amendment. It was again defeated, this time by only a small majority. That very little interest was taken was indicated by the fact that only thirty-four per cent of those voting at the last general election took the time to register an opinion.

ELECTION OF 1911

Name of Measure	By Whom Submitted	Yes	No	Majority Approv'g	Majority Against	Pct. Voting
Amendment to Sec. 9, Article IX -----	Legislature	41,768	46,662	---	4,894	--

At the primary election in 1912 was submitted a plan initiated by the people establishing direct election of United States Senators, resembling the Oregon plan. By this proposal, the people when voting for members of the legislature would at the same time declare their preference for United States Senators, and the candidates for the legislature would be required to state whether or not they would be bound by the popular wish. This law was adopted by a tremendous majority; but its operation became unnecessary by the adoption of the seventeenth amendment to the Federal Constitution.

The general election in 1912 witnessed the submission of three constitutional amendments, two initiated by the people and one submitted by the legislature. Guthrie, determined to regain the capital of the state, filed an initiative petition demanding a resubmission of the capital question. The people of the state, however, returned a majority of 16,557 in favor of Oklahoma City. The other initiated proposition, providing for the creation of a board of agriculture consisting of eleven members, all of whom were to be farmers, was adopted by a huge majority. The legislature submitted the school

aid amendment, which failed because it fell short of the constitutional majority. The purpose of this amendment was to give the legislature additional power to levy taxes for the support of public schools in those counties where the ten per cent ad valorem tax is not sufficient.

ELECTION OF 1912

Name of Measure	By Whom Submitted	Yes	No	Majority Approv'g	Majority Against	Pct. Voting
Popular Nomination of						
U. S. Senators-----	By the People	139,844	23,400	116,444	-----	75
Location of State Capitol	By the People	103,106	43,133	16,557 ⁶⁴	-----	57
School Aid Bill-----	Legislature	100,042	65,436	34,606 ⁶⁵	-----	65
Creating a Board of Agriculture -----	By the People	164,530	63,586	100,944	-----	91

In August, 1913, a special election was called to consider five propositions: four constitutional amendments, all submitted by the legislature, and a referendum against the mining bill passed by the legislature. The railroad consolidation amendment, submitted now for the fourth time, was carried. The distributive tax measure, submitted for the second time, was likewise passed. The other amendments, one providing for the modification of the state board of agriculture already created, and another giving sixteen per cent of the voters in any county the privilege of calling an election for the creation or the abandonment of any township, were likewise passed. This being a special election, all that the amendments required was a bare majority in their favor. At the general election in 1910, the railroad amendment and the tax distribution measure received 83,169 and 101,636 votes respectively, with 27,994 and 58,503 majorities; but were defeated because they failed to receive a majority of votes cast for candidates. Yet at

⁶⁴Failed to get a majority of all votes cast.

⁶⁵Ibid.

the special election where they received 59,437 and 63,330 votes with majorities of only 24,322 and 15,878, they became laws. Thus twenty-three per cent of the voters imposed upon the entire state a measure which forty per cent of the voters at a general election had approved without making it effective. Much depends upon the kind of election, whether general or special. The referendum against the mining bill was likewise successful, and the legislative measure, due to the great opposition offered by the miners of the state, was vetoed. This is the first instance in the experience of Oklahoma under the referendum, where a referendum against a legislative act has succeeded in vetoing the law. It is well to note in passing that the amendments adopted at this special election are the only amendments, submitted by the legislature, that were ratified by the people, and at this election only thirty-seven per cent of those voting at the next general election took the trouble to vote.

ELECTION OF 1913

Name of Measure	By Whom Submitted	Yes	No	Majority Approv'g	Majority Against	Pct. Voting
Amendment to Art. IX, Sec. 9 -----	Legislature	59,437	35,115	24,322	--- ---	--
Mining Bill ⁶⁰ -----	By the People	73,345	21,559	51,786	-----	--
Tax Distribution -----	Legislature	63,330	30,295	33,035	-----	--
Township Bill -----	Legislature	50,634	39,690	10,944	-----	--
Creating State Board of Agriculture ----	Legislature	67,367	25,087	42,280	--- ---	--

The primary election in 1914 found five measures presented. The legislature for the second time submitted the school aid amendment, which succeeded no better than the first attempt. Its failure was again due to the lack of a constitutional majority, although the amendment received a majority of 32,735 votes. The referendum was demanded against the anti-gambling

⁶⁰A referendum against the mining bill.

and race horse bill, and the law abolishing slot machines; but in each case the legislature was sustained. A law initiated by the people, establishing a system of direct taxation, received a majority of votes but failed to get a constitutional majority. The fifth measure was a constitutional amendment making excessive drunkenness by public officials grounds for impeachment. This was the only measure successful.

Through the efforts of Charles West, candidate for governor in 1914, four constitutional amendments, generally known as the "West Amendments," were submitted at the general election that year. They provided, respectively: The reduction of the number of appellate courts; the reduction of the state levy from three and one-half to two and one-half mills; a mine production tax of two per cent upon the gross value of the production of gas, crude oil, and petroleum, and providing its distribution among the road and bridge, and common school funds; the reduction of the legislature to one body of eighty members. While each amendment received a majority of votes, none received a majority of all votes cast.

ELECTIONS OF 1914

Name of Measure	By Whom Submitted	Yes	No	Majority Approv'g	Majority Against	Pct. Voting
School Aid Bill -----	Legislature	89,653	56,916	32,737 ⁷⁰	-----	82
Anti-gambling Bill ⁶⁷ ---	By the People	68,878	76,495	-----	7,617	80
Slot Machine ⁶⁸ -----	By the People	67,562	73,770	-----	6,208	74
Direct Taxation ⁶⁹ -----	By the People	88,994	45,232	43,762 ⁷¹	-----	74
Drunkenness Cause for Impeachment -----	By the People	114,833	31,659	83,174	-----	84
Reduction of Appellate Courts -----	By the People	105,529	64,782	40,747 ⁷²	-----	67
Reduction of State Levy	By the People	117,675	57,120	60,555 ⁷³	-----	69
Mine Production Tax --	By the People	107,342	62,380	44,962 ⁷⁴	-----	66
Reduction of Legislature	By the People	94,686	71,742	22,944 ⁷⁵	-----	66

Action under the initiative and referendum was not taken again until the primary election in 1916, at which time the legislature submitted nine constitutional amendments: Creating a tax commission of three members to replace the existing board of equalization, imposing a literacy test for the exercise of the franchise, distributing taxes derived from corporations, reducing the salary of the clerk of the supreme court, allowing the legislature to provide for compulsory or elective compensation by the employer to the employee in case of death or permanent disability, limiting municipal debts, consolidating the supreme and criminal courts of the state, reducing the number of jurymen in the district court to eight except in capital cases, abolishing the county courts and vesting their jurisdiction in the district courts. These amendments were prompted by a demand on the part of the electorate for greater economy in public administration. Whatever

⁶⁷Referendum against legislative act.

⁶⁸Referendum against legislative act.

⁶⁹Initiated law.

⁷⁰Failed to get a majority of all votes cast.

⁷¹Ibid.

⁷²Ibid.

⁷³Ibid.

⁷⁴Ibid.

⁷⁵Ibid.

might have been the attitude of the people in the matter of economy, they were nevertheless opposed to such a fundamental change, and the amendments were all decisively defeated with from 42,535 to 110,090 majorities.

Two constitutional amendments, each initiated by the people, were submitted at the general election in November, 1916. The first abolished all election laws and provided an election board composed of members each appointed by the chairmen of the three political parties casting the highest number of votes at the last general election. This had its origin in the desire of the Socialist party to have a member on the election board. The second forbade the legislature to pass any registration law, and provided that such laws should be enacted only through the initiative and referendum. Both failed to receive a constitutional majority.

ELECTIONS OF 1916

Name of Measure	By Whom Submitted	Yes	No	Majority Approv'g	Majority Against	Pct. Voting
State Tax Commission	Legislature	50,656	146,130	-----	95,474	70
Literacy Test	Legislature	90,605	133,140	-----	42,535	80
Distribution of Taxes	Legislature	76,093	127,525	-----	51,432	71
Reducing Salary Supreme Court Clerk	Legislature	58,933	134,963	-----	76,030	69
Limiting Municipal Debt	Legislature	44,687	147,933	-----	103,246	69
Compulsory Compensation	Legislature	50,998	139,132	-----	88,134	69
Consolidation of Appellate Courts	Legislature	42,896	106,896	-----	64,000	69
Reduction of Number of Jurymen	Legislature	49,954	142,333	-----	92,379	69
Abolishing County Court	Legislature	47,104	157,284	-----	110,180	73
Election Law	By the People	147,067	119,602	27,465 ⁷⁶	-----	87
Registration Law	By the People	140,366	114,824	25,542 ⁷⁷	-----	84

The state woman's suffrage amendment was submitted to the people by the legislature at the general election in 1918, and received a majority of all votes cast.

⁷⁶Failed to get a majority of all votes cast.

⁷⁷Ibid.

ELECTION OF 1918

Name of Measure	By Whom Submitted	Yes	No	Majority Approv'g	Majority Against	Pct. Voting
Woman's Suffrage-----	Legislature	106,909	81,481	25,428	-----	

At a special election in May, 1919, the people rejected by a great majority a constitutional amendment submitted by the legislature, providing for a highway commission composed of members appointed by the governor with the consent of the senate, and for the issuance of bonds in the sum of \$50,000,000 for the construction of good roads.

ELECTION OF 1919

Name of Measure	By Whom Submitted	Yes	No	Majority Approv'g	Majority Against	Pct. Voting
Good Roads Amendment-----	Legislature	69,917	171,327	-----	101,410	

At the general election in 1920 five measures were submitted to the people—a bill to “veto and render in-operative” a legislative enactment; and four constitutional amendments, one of which was a measure to vitalize a former amendment that the people had placed in the constitution but which the legislature had failed to vitalize. Strange as it may seem, the only one of these measures adopted was the veto on the legislative measure.

ELECTION OF 1920

Name of Measure	By Whom Submitted	Yes	No	Majority Approv'g	Majority Against	Pct. Voting
Reg. Practice of Medicine-----	By People	211,252	164,788	46,464	-----	77
Vitalize Sec. 12A-----	By People	162,749	179,271	-----	16,522	70
Maintenance of Com. Schools---	By People	169,639	188,574	-----	18,935	73
Providing certain classes of In- surance organizations ---	Legislature	157,064	159,919	-----	2,855	65
Compensation of members of Legislature -----	Legislature	125,463	173,274	-----	47,811	60

The eighth legislature passed a concurrent resolution “authorizing the holding of an election for the purpose of voting upon a proposed amendment to Section 9, Article X, of the Constitution of the State of Oklaho-

ma,"⁷⁸ which limits the school district levy for the support of common schools to five mills, with a possible increase of ten mills more "on condition that a majority of the voters thereof, voting at an election, vote for said increase."⁷⁹ It is interesting to note that although in the concurrent resolution the governor is "authorized and directed" to call a special election for the purpose of submitting this amendment to the people, and although he approved this bill on April 2, 1921, no special election has been called to date. (May, 1922)

SUMMARY

TABLE I. CONSTITUTIONAL AMENDMENTS PROPOSED BY
LEGISLATURE.

Name of Bill -----	Date	For	Against	Failed to get a majority of all votes cast
Liquor Agency -----	1908		x	
Torrens Land Titles -----	1908			x
Location of State Capitol -----	1908			x
Tax Distribution ("Sec. 12 A") -----	1910			x
Amendment to Sec. 9, Art. 9 -----	1910			x
Amendment to Sec. 9, Art. 9 -----	1911		x	
School Aid Bill -----	1912			x
Amendment to Sec. 9, Art. 9 ----- (fourth time)	1913	x		
Tax Distribution ----- (creating Sec. 12 A)	1913	x		
Township Bill -----	1913	x		
Creating State Board of Agriculture --	1913	x		
School Aid Bill -----	1914			x
State Tax Com. -----	1916		x	
Literacy Test -----	1916		x	
Distribution of Taxes ("Sec. 12 A") --	1916		x	
Reducing Salary of Supreme Court Clerk	1916		x	
Limiting Municipal Debt -----	1916		x	
Compulsory Compensation -----	1916		x	
Consolidation of Appellate Courts ----	1916		x	
Reduction of number of Jurymen -----	1916		x	
Abolishing County Court -----	1916		x	
Woman Suffrage -----	1918	x		
Good Roads Bill -----	1919		x	
Insurance Organizations -----	1920		x	
Pay of Legislature -----	1920		x	
25 Constitutional amendments submitted by Legislature				
5 were passed.				
14 were voted down.				
6 failed for lack of majority of all votes cast.				

⁷⁸S. L. 1921, Ch. 142.⁷⁹Const. Art. X, Sec. 9.

TABLE II. CONSTITUTIONAL AMENDMENTS INITIATED BY THE PEOPLE.

Name of Bill	Date	For	Against	Failed to get a majority of all votes cast
Amendment to Art. 9, Sec. 9	1910		x	
Location of State Capitol	1910	x	Supreme Court declared it illegal	
"Grandfather Clause"	1910	x	U. S. Supreme Court declared it unconstitutional	
Woman Suffrage	1910		x	
Local Option	1910		x	
Location of State Capitol	1912		x	
Creating Board of Agriculture	1912	x		
Drunkenness Cause for Impeachment	1914	x		
Reduction of Appellate Courts	1914			x
Reduction of State Levy	1914			x
Mine Production Tax	1914			x
Reduction of Legislature	1914			x
Election Law	1916			x
Registration Law	1916			x
Vitalize Sec. 12 A	1920		x	
Maintenauce of Common Schools	1920		x	

16 popularly initiated amendments.
4 were passed.
6 were voted down.
6 failed for lack of majority of all votes cast.

TABLE III. LAWS INITIATED BY THE PEOPLE.

Name of Bill	Date	For	Against	Failed to get a majority of all votes cast
Sale of School Lands	1908		x	
New Jerusalem Plan	1910		x	
Direct Nomination of U. S. Senators	1912	x		
(Seventeenth U. S. Amendment made inoperative)				
Direct Taxation	1914			x

4 laws initiated by people.
1 was passed (now inoperative).
2 were voted down
1 failed for lack of majority of all votes cast.

TABLE IV. SUBMITTED BY LEGISLATURE FOR POPULAR APPROVAL.

Name of Bill	Date	For	Against	Failed to get a majority of all votes cast
New Jerusalem Plan	1908	x		
Popular approval secured "for advisory purposes."				

TABLE V. REFERENDA DEMANDED BY PEOPLE.

Veto of Legislative Acts (Referenda against law)

Name of Bill-----	Date	For	Against	Failed to get a majority of all votes cast
Bryan Election Law (Ref. Against)-----	1910		x	
Mining Bill (Ref. to Veto)-----	1913	x	(In favor of vetoing)	
Slot Machine Bill (Ref. Against)-----	1914		x	
Anti-gambling Bill (Ref. Against)-----	1914		x	
Regulating Practice of Medicine (Ref. Against)-----	1920	x	(In favor of vetoing)	

5 referenda against legislative action.
2 were carried.
3 were voted down.

During the period in which the initiative and referendum have been in operation in Oklahoma, fifty-one measures were voted upon at various elections. Of these, twenty-six were submitted by the legislature; twenty were initiated by the people; and on five occasions a referendum was demanded against a legislative act. Twenty-five of those submitted by the legislature were constitutional amendments; and one, the "New Jerusalem Plan," was submitted for "advisory purposes only." Only five of the twenty-five submitted were ratified by the people. Six of the rejected amendments received a majority of those voting on the measure, some as large as 60,000, but failed to secure a majority of all votes cast, while fourteen were defeated by adverse majorities. This phase of the question is not new, for legislatures have for decades submitted amendments to the people, and in most states the submission of constitutional amendments is mandatory. Every amendment submitted under article V of the constitution might as well have been submitted under article XXIV of the constitution, which provides for regular constitutional amendments in the same manner as the constitutions of a number of states where the initiative and referendum are not in force. Thus far nothing has been added to the con-

stitution of Oklahoma that could not have been brought about by the common method of constitutional amendment in other states. The legislature of Oklahoma in the same number of years, has submitted more amendments than the legislatures of most states, but this can be attributed to the fact that the state is new and the problems of adjustment are more numerous.

Those who contend that through the initiative the people will enact laws that will serve their interest and promote their welfare more than those passed by the legislature, are doomed to disappointment in the experience of Oklahoma. Of the twenty measures initiated by the people, fifteen were defeated, although seven received a majority of those voting upon the measure, but not a majority of all votes cast for candidates. The measures adopted were: 1. providing for the "Grandfather Clause"; 2. creating a state board of agriculture; 3. locating the state capital; 4, making drunkenness grounds for impeachment, and; 5. providing for the direct election of United States Senators. Of these, the "Grandfather Clause" was declared invalid by the United States Supreme Court; the vote upon the state capital was declared illegal; the board of agriculture was modified by a subsequent legislature; the initiated law became inoperative upon the adoption of the seventeenth amendment to the Federal Constitution; and the amendment making drunkenness a cause for impeachment is the only initiated measure in force today. This amendment is of little consequences now, and would meet no serious opposition anywhere.

On the other hand, the prophecy that the initiative and referendum would lead to hasty and radical legislation has not been fulfilled. The initial petition has been filed on one hundred and ten questions, but only

twenty-five went so far as being voted upon. Many of the petitions were never seriously considered, and were filed merely for political purposes; in others the petition failed because of the inability to secure signatures. That the initiative and referendum have accomplished nothing extraordinary is self-evident; whether they have caused any political instability, time alone must determine.

CHAPTER IX

THE TAXATION AND REVENUE SYSTEM

In describing the taxation and revenue system of the State of Oklahoma four points should be considered.

I. General constitutional and statutory provisions governing taxation and revenue.

II. State taxes, their assessment and collection.

III. Revenue derived from sources other than taxation.

IV. The custody and the disbursement of state money.

GENERAL CONSTITUTIONAL AND STATUTORY PROVISIONS GOVERNING TAXATION AND REVENUE

Oklahoma, in common with other states, has placed in its constitution several provisions relating to this subject. They may be divided roughly into (A) Powers specifically given the legislature in respect to taxation and (B) Limitations upon the power of the legislature in respect to taxation and revenue.

A. By Article X, Section 2, of the constitution, the legislature is required to "provide by law for an annual tax sufficient, with other resources, to defray the estimated ordinary expenses of the State for each fiscal year." In case the expenses of any fiscal year shall exceed the income, "the Legislature may provide for levying a tax for the ensuing fiscal year, which, with other resources, shall be sufficient to pay the deficiency, as well as the estimated ordinary expenses of the State for the ensuing year."¹ For paying the state debt the legislature must also provide for levying a tax an-

¹Const., Art. X, Sec. 3.

nually, sufficient to pay the principal and interest of such debt within twenty-five years from the final passage of the law which created the debt.²

“The State may select its subjects of taxation, and levy and collect its revenues independent of the counties, cities or other municipal subdivisions.”³

The legislature has power, also, “to provide for the levying and collection of license, franchise, gross revenue, excise, income, collateral and direct inheritance, legacy, and succession taxes; also graduated income taxes, graduated collateral and direct inheritance taxes and graduated legacy and succession taxes; also stamp registration production or other specific taxes.”⁴

“The legislature may authorize the levy and collection of a poll tax on all electors of the State, under sixty years of age, not exceeding two dollars per capita per annum, and may provide a penalty for the non-payment thereof.”⁵

B. The limitations placed upon the legislature in respect to taxation and revenue may be divided under two general heads, (a) Limitations in respect to legislative procedure and (b) Direct limitations upon legislative discretion.

(a). There are several limitations upon the legislature in respect to procedure. Article V, Section 3 of the constitution, provides that “All bills for raising revenue shall originate in the House of Representatives. The Senate may propose amendments to revenue

²Ibid, Sec. 4.

³Ibid, Sec. 13.

⁴Const., Art. X, Sec. 12.

⁵Ibid, Sec. 18.

bills. No revenue bill shall be passed during the last five days of the session.”⁶

“Every act enacted by the Legislature____levying a tax shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose.”

Every bill introduced into the legislature must be read on three different days in each house. On final passage it must be read at length. Bills must be passed by a majority of each house.⁸ Every bill, before it becomes a law, after being passed by a majority vote of the legislature, must be presented to the governor, who has a right to veto it. The governor is given the further power to veto any item of an appropriation bill. In case of the disapproval of a bill by the governor, he returns it to the house from which it originated. Any bill or item disapproved is void unless repassed by a two thirds vote of both houses.⁹

(b) There are, likewise, a number of direct limitations upon the legislature with respect to taxation and revenue. The legislature cannot in any way, either by general, special or local laws exempt property from taxation other than the property exempted by the constitution.¹⁰ An important limitation upon the state's taxing power is the status of Indian lands, which has

⁶Ibid, Art. V, Section 33. a. Revenue laws, in contemplation of this section are only those whose principal purpose is the raising of revenue, and not those under which revenue may incidentally arise. Ex Parte Ambler, 11 Okla. Crim. 449, 148 Pac. 1061. b. Under this section a revenue bill is one that levies taxes in the strictest sense of the word. Johnson v. Grady County, 50 Okla. 188, 150 Pac. 497.

⁷Ibid, Art. X, Sec. 19.

⁸Ibid, Art. V, Sec. 34.

⁹Ibid, Art. VI, Secs. 11 and 12.

¹⁰Ibid, Art. V. Sec. 46.

been summed up as follows by Mr. Lawrence Mills, in his valuable book, *Lands of the Five Civilized Tribes*.

“The State of Oklahoma, with respect to the power of taxing the lands of the Five Civilized Tribes, however, is in a peculiar position. By Section 1 of the Act of June 16, 1906 (Enabling Act), the present State of Oklahoma was authorized to adopt a constitution and be admitted into the Union as a state: ‘Provided that nothing contained in the said constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights, by treaties, agreements, law or otherwise, which it would have been competent to make if this Act had not been passed.’ And by Section 22 of said Act, the Constitutional Convention was required by ordinance irrevocable to accept the terms and conditions thereof, which was done on the 22nd day of April, 1907. In pursuance of the paramount authority of Congress with respect to the persons and property of the Indians, there was exempted from taxation by Art. X, Section 6 of the Constitution ‘such property as may be exempt by reason of treaty stipulations existing between the Indians and the United States Government, or by Federal laws, during the force and effect of such treaties or Federal laws.’

“The lands of the Five Civilized Tribes are therefore subject to taxation by the State except as they may be exempt therefrom by virtue of some treaty between the

United States and the respective tribes, or a law of Congress or provision of the State Constitution.¹¹

“Exemption from taxation, in varying degrees, was granted to the members of each of the Five Civilized Tribes, under the treaties by which the lands of the several tribes were allotted in severalty. These treaty provisions have been held to confer vested rights which were not subject to abrogation by Congress.”

Nor is the legislature permitted to remit fines, penalties, and forfeitures or refund moneys legally paid into the treasury.¹² Nor has the legislature power to release or extinguish or to authorize the releasing or extinguishing in whole or in part of the indebtedness, liabilities, or obligations of any corporations, or individual to the state, county, or other municipal subdivision of the state.¹³ The legislature is not permitted to extend the time for collection of taxes “or otherwise relieve any assessor or collector of taxes from due performance of his official duties or his securities from liability.”

Article X, Section 5, of the constitution, provides that the “power of taxation shall never be surrendered, suspended or contracted away.” Taxes must be uniform upon the same class of subjects. All property which is taxed on the ad valorem basis must be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale.¹⁵

¹¹Shock v. Sweet, 45 Okla. 51, 145 Pac. 388; Kidd v. Roberts, 43 Okla. 603, 143 Pac. 862; Allen v. Trimmer, 45 Okla. 83, 144 Pac. 795; Gleason v. Wood, 38 Okla. 502, 144 Pac. 702; United States v. Shock, 187 Fed. (CC) 862.

¹²Const., Art. V. Sec. 46.

¹³Ibid, Sec. 53.

¹⁴Ibid, Sec. 46.

¹⁵Ibid, Art. X, Sec. 8.

The constitution provides for a definite limitation upon the number of mills of tax which may be levied upon an ad valorem basis. For all purposes, state, county, township, city or town, and school district, the total tax must not in any one year exceed thirty-one and one-half mills on the dollar. The constitution further provides that the state levy must not be over three and one-half mills; that the county levy must not exceed eight mills, with the proviso "that any county may levy not exceeding two mills additional for a county high school and aid to the common schools of the county, not over one mill of which shall be for such high school, and the aid to such common schools shall be apportioned as provided by law." The township levy must not be over five mills, the city or town levy not more than ten mills, nor the school district levy more than five mills for school district purposes for the support of common schools. This annual rate for school purposes, however, may be increased by any school district by an amount not to exceed ten mills on the dollar of valuation, on the condition that a majority of voters in the district, at a duly held election, vote for this increase.¹⁶ This constitutional provision is further limited by a law providing that the county may not levy more than four mills, with the added proviso that it may levy one mill additional in aid of the common schools of the county and that where the assessed valuation is less than \$5,000,000, the county shall levy not to exceed seven mills for current expenses, and one mill in aid of the common schools of the county. There is a further provision that where the assessed valuation is less than \$13,500,000, the county levy shall not exceed six

¹⁶Const., Art. X, Sec. 9.

mills for current expenses and one mill additional in aid of the common schools of the county. The city may not levy more than six mills, the incorporated town not more than four mills, the township not over one and one-half mills, and the school district, for common schools, not over five mills. In all cases, current expenses do not include sinking fund levies, interest on bonded indebtedness, or the payment of judgments. The county excise board may levy one additional mill for tick eradication.¹⁷

For the purpose of erecting public buildings in counties, cities, or school districts, these limitations may be exceeded, when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and a majority of the qualified voters within such a district have voted favorably therefor. Such an increase shall not, however, exceed five mills on the dollar on the assessed valuation of the taxable property in such county, city or school district.¹⁸

The constitution, by implication, gives the legislature power to classify property for the purpose of taxation and to value different classes of property by different means or methods.¹⁹ Taxes must be levied and collected, however, by general laws and must be for public purposes only, except where it is necessary to carry into effect section 31 of the Bill of Rights, which provides that the state has a right to engage in any occupation or business for public purposes except agriculture, which may be engaged in only for educational

¹⁷S. L. 1917, Ch. 262.

¹⁸Const., Art. X, Sec. 10.

¹⁹Ibid, Sec. 22.

and scientific purposes or for the support of the penal, charitable and educational institutions of the state.²⁰

Certain property in the state, by constitutional provisions, is especially exempted from taxation.²¹

The legislature is further required to see that all moneys collected by taxation, fees, fines, and public charges of other kinds, be accounted for "by a system of accounting that shall be uniform for each class of accounts, state and local, which shall be prescribed and audited by authority of the State."²²

²⁰Ibid, Sec. 14.

²¹Ibid, Sec. 6. All property used for free public libraries, free museums, public cemeteries, property used exclusively for religious and charitable purposes, and all property of the United States, and of this State, and of counties and of municipalities of this State; household goods of the heads of families, tools, implements, and livestock employed in the support of the family, not exceeding one hundred dollars in value, and all growing crops, shall be exempt from taxation: Provided, That all property not herein specified now exempt from taxation under the laws of the Territory of Oklahoma, shall be exempt from taxation until otherwise provided by law: And Provided further, That there shall be exempt from taxation to all ex-Union and ex-Confederate soldiers, bona fide residents of this State, and to all widows of ex-Union and ex-Confederate soldiers, who are heads of families and bona fide residents of this State, personal property not exceeding two hundred dollars in value. (Bunn's Ed. Sec. 269.)

All property owned by the Murrow Indian Orphan Home, located in Coal County, and all property owned by the Whitaker Orphan Home, located in Mayes County, so long as the same shall be used exclusively as free homes or schools for orphan children, and for poor and indigent persons, and all fraternal orphan homes and other orphan homes, together with all their charitable funds, shall be exempt from taxation, and such property as may be exempt by reason of treaty stipulations, existing between the Indians and the United States government, or by Federal laws, during the force and effect of such treaties or Federal laws. The Legislature may authorize any incorporated city or town, by a majority vote of its electors voting thereon, to exempt manufacturing establishments and public utilities from municipal taxation, for a period not exceeding five years, as an inducement to their location. (Bunn's Ed. Secs. 270, 271.)

²²Const.. Art. X. Sec. 30.

The legislature may not impose taxes for the benefit of any county, city, town, or other municipal corporation but may, by general laws, confer on these governmental units themselves the power to assess and collect taxes.²³

STATE TAXES, THEIR ASSESSMENT AND COLLECTION

There are several authorities, both state and local, which have to do with the assessment, levying and collection of taxes. Since most of the main taxes in the state are handled by several different authorities, it will be necessary to describe these taxes and the methods used in their levy and collection somewhat in detail.

THE GENERAL PROPERTY TAX

For the purpose of describing the taxation system of the state the general property tax may be considered as the regular ad valorem tax provided for in the constitution which is not assessed or collected in special ways. Those ad valorem taxes which are assessed in special ways, such as the bank stock tax, the gross production tax, and the public utility tax, will be considered separately.

The general property tax, with the exception of the tax on public utilities, is assessed by the county assessor, an official who is elected by the qualified electors of the county. Beginning on January fifteenth of each year, he visits each city and voting precinct in the county, and secures statements from taxpayers as to the amount and

²³Ibid, Sec. 20. This section does not deny to the legislature the right to impose taxes for purposes in which, although of a municipal character, the state has a sovereign interest, such as highways. *Ex Parte Ambler*. 148 Pacific 1061. 11 Okla. Crim. 449. Neither does it forbid the imposition by the legislature of a tax for common school districts of the state. *A. T. & S. F. Ry. Co. v. State*, 28 Okla. 94, 113 Pac. 921.

value of property owned by them subject to the general property tax. Property owners are supposed to list their property, and as a rule no serious attempt is made by the assessors to make a careful survey of all the property listed. No valuation maps are at hand, no lot and block maps, or other devices for finding out the true value of the property. After the assessor has compiled the property lists from these statements, and has added thereto all property that has not been voluntarily listed with penalties as provided by law for dereliction, he delivers the lists to the county commissioners, who act as the county board of equalization, having authority to adjust, lower or raise individual assessments, to add omitted property and to cancel assessments of property not taxable. Appeals may be taken to the district court. In case the county board of equalization increases the valuation of any property above the value returned by the assessor, an appeal lies to the state board of equalization. During this hearing, the state auditor takes and preserves the evidence and in case of a last and final appeal to the supreme court transmits the evidence to them. The state board of equalization, composed of the governor, the state auditor, the state treasurer, the secretary of state, the attorney general, the state examiner and inspector, and the president of the state board of agriculture equalizes assessments as between counties.²⁴ After fixing the tax levies for the year (with the exception of the state levy, which is fixed by the state board of equalization,^{24a} and which must by the constitution, include one-

²⁴R. L. 1910, Sec. 7373.

^{24a}R. L. 1910, Sec. 7373. The Revised Laws of 1910 (Sec. 7374) charge the board of equalization with the duty of ascertaining the total value of property in the state and with computing the amount appropriated to pay expenses of government for each fiscal year, with

fourth mill for the state highway construction fund, and one-fourth mill for the common school fund) the county excise board certifies them to the county assessor who thereupon makes out the tax rolls, showing the total amount of personal, real and corporation taxes and delivers them to the county treasurer for collection.²⁵ The county treasurer is responsible for the collection of the general property taxes for the state, for the county, and for the local units as they appear on the tax roll delivered to him by the county assessor.²⁶ The county treasurer pays over to the state and local treasurers each month all moneys which he has collected on behalf of the state and local governments.²⁷ The general taxes are distributed among the different taxing units according to the levy made by each. The one-fourth mill tax levied by the state board of equalization for the common school fund goes directly to that fund,²⁸ while the one-fourth mill levied for the state highway construction fund is held in trust by the state treasurer for the benefit of the roads in the county

²⁵Bunn, 7365a to 7365p.

²⁶Bunn, 736561.

²⁷S. L. 1917, Ch. 104.

²⁸Const., Art. XI, Sec. 3. R. L. 1910. Sec. 7374.

20% added thereto as an allowance for delinquent taxes; and from such sum deducting the estimated income from all sources other than income from ad valorem taxes, and of computing the rate of levy necessary to raise the amount required for each fiscal year. In the case of *El Reno Wholesale Grocery Co vs Taylor County Treasurer*. (Oklahoma Appellate Court Reporter Vol. XVIII, page 1) it was held that this section does not delegate to the legislature the right to levy taxes, nor does it impose upon the board the duty of making a levy. They can only make a levy when this becomes necessary to meet all of the appropriations made by the state; but possess no general power to make a levy.

from which it was collected.²⁹ The state's part of the general property tax goes into the general fund and is applicable for any legislative appropriation.³⁰ The state examiner and inspector is required to examine without previous notice the books of each county treasurer twice each year, and furthermore, is required to prescribe a uniform bookkeeping system for such officers.³¹

The general property tax of the state of Oklahoma can be severely criticised in two main ways: first, because of the nature of the tax, and second, in respect to its administration.

The general property tax of Oklahoma, being a tax on the fair value of all property whether personal or real, necessarily makes for fraud and dishonesty in declaring property values. It is a notorious fact that only a very small amount of the personal property of the state is declared at all for the purpose of assessment. Under the present system, however, to declare all personal property, such as bank deposits or credits would mean bankruptcy for the individual so doing, for while tangible property is only assessed at from one-fourth to one-half of its true value, bank deposits so declared would be assessed at their full value. In many instances, the combined state, county and local taxes would be greater than the interest received from the bank. This almost forces taxpayers to be dishonest, whereas, to quote from Professor Lutz's "The State Tax Commission" (p. 633), "The experience with the income tax in Wisconsin has convinced that commission that the average taxpayer would rather be honest than not,

²⁹S. L. 1915, Ch. 173. Art. III, Sec. I.

³⁰R. L. 1910, Sec. 7374.

³¹Const., Art VI, Sec 19.

unless confiscation is to be the result, but under the general property tax there is no assurance or safeguard against this outcome." A remedy for this situation can only be found in a constitutional amendment providing for some form of classification of property or in an amendment providing for a different levy on intangible personal property than that on tangible property. If the tax on intangible personal property were not over one or two mills, and if it were levied separately from the general property tax, the state would not only secure greater revenue, but it would also prevent dishonesty and fraud, which has become an almost universal habit under our present system.

The method of assessing the general property tax is about as bad as it well could be. The state provides no general standards for local assessors, provides no valuation maps, no field books, no lot and block maps, or other methods commonly used for actually finding property value. Furthermore, the state furnishes no criteria for the determination of value. The law does not require that the true consideration for every conveyance of property be inserted in the deed. Supplementary evidence such as is furnished by sales or actual rentals is not taken into consideration. Nor are such factors as kind of construction, cubic capacity, floor space, or depreciation, usually definitely taken into consideration in determining value. Moreover, the county assessors are not subjected to any higher administrative control which would tend to make for some standardization of assessing practice. Since the assessors are elected by the county, and must depend upon the county for re-election, there is a temptation to make low valuations on the property of those having political

or financial power within the community. Another great criticism that can be brought against the system is the fact that instead of the state's thoroughly examining the individual's property and making an assessment from that valuation, each individual must swear in his own property. This situation puts a premium upon dishonesty and makes for the economic survival of the most dishonest men in the community, while offering no protection for those who are conscientious.

EXPRESS COMPANY TAX

This is a tax upon all express companies operating in the state. The assessment upon the property of such companies is the proportion of the value of all the property assessed on each express company pertaining to and employed in the express business, which the mileage of the express company in the state bears to the total mileage, not including ocean mileage. This tax is in lieu of all other taxes. The assessment of this tax is made by the state board of equalization, which transmits to the county assessor of any county in which such a company conducts its business a statement showing the mileage of the company in the county and the assessment made upon that company by the state board of equalization. This tax is collected by the county treasurer, who pays the state's share to the state treasurer, and is distributed the same as are other ad valorem taxes.³²

BANK STOCK TAX

This is an ad valorem tax on bank stock. The value is determined by finding the actual value of the shares

³²S. L. 1917, Ch. 263.

of stock less such portion as is invested in real estate, which is separately assessed and taxed by the state. This is really a tax on all stock of all banks located in the state. The tax is deducted by the bank officials before the stockholders' dividends are paid. Every bank located within the state, whether such bank has been organized under the laws of the state of Oklahoma, or any other state or territory, or of the United States, is required to pay this tax. Shares of the capital stock of national banks, not located in the state, but held in this state, are not subject to tax. This tax is collected by the county treasurer, who pays the state's share to the state treasurer.³³ This tax is distributed among the different governmental units in the same way as is the general property tax, i. e., according to the levy made by each.

TAX ON CORPORATIONS

This is the regular ad valorem tax as applied to corporations. Corporations are assessed upon the value of their moneyed capital, surplus and undivided profits. "Moneyed capital" includes the money actually invested in the business of the corporation, whether represented by certificates of stock, debentures or bonds. This tax is paid by all corporations organized in the state for profit, other than public service corporations assessed by the state board of equalization, national banks, state banks and trust companies. This tax is distributed among the different governmental units in the same way as is the general property tax.³⁴

³³S. L. 1919, ch. 203, as amended by S. L. 1921, ch. 94.

³⁴S. L. 1919, Ch. 203.

PUBLIC UTILITY TAX

This is the regular ad valorem tax as applied to public service corporations organized, existing or doing business in the state. The state board of equalization makes the assessment upon all property of public utility corporations "at its fair cash value, estimated at the price it would bring at a fair voluntary sale." The state board of equalization causes the state auditor to certify this value to the county clerk of each and every county in which any portion of the public utility is located. This return shows the various portions of the property located in and taxed by each county and each city, town, township, school district or other municipal subdivision of the state. This certification must be made on or before the first Monday of May of each year. The certified value of the property in each of these subdivisions of the state is subject to the levy made upon all property in that subdivision. This tax is distributed the same as the general property tax, i. e., according to the levy made by the state and each subdivision thereof. ³⁵ ³⁶

³⁵R. L. 1910, Secs. 7336 to 7350.

³⁶Sec. 12a of Art. X of the Constitution, adopted at an election held August 5, 1913, provided that: "All taxes collected for the maintenance of the common schools of this State, and which are levied upon the property of any railroad company, pipe line company, telegraph company, or upon the property of any public service corporation which operates in more than one county in this State, shall be paid into the Common School Fund and distributed as are other common school funds of this state." This section has not been vitalized by the legislature, and since the courts have held that it was necessary to vitalize it by legislative enactment before it became effective (*Linthicum, County Treasurer, v. School District No. 4, Choctaw Co.*, 490 Okla., 48, 149 Pac. 898), the old method provided for the distribution of this tax is still in effect.

CRITICISM OF THE PUBLIC UTILITY TAX

The chief objection to this tax is in the difficulty of determining what is the "fair cash value" of these utilities. By law, the utilities are required to furnish to the state board of equalization statements as to their financial resources. The statements made by these companies are not conclusive, however, upon the board of equalization, the board having power to examine books, records, etc., and to compel the attendance of witnesses, officers and agents. It should be perfectly manifest to anyone who has given the subject a moment's consideration that the state board of equalization is not a proper body for assessing these utilities. It has no expert staff of engineers and accountants to determine what the actual values are, and therefore must depend almost entirely upon the statements turned in by the companies or the statements made by their officers. While, undoubtedly, several factors are taken into account, such as capital stock, bonded indebtedness, total revenue, net revenue, interest, and dividends, an examination made by the author, of some sixty odd gas and electric company valuations, would seem to show that there is no definite method of estimating the relative values of any or all of these factors. A cursory glance at the assessment placed on different plants would seem to indicate that the company with the best lawyers and the greatest importunity receives the lowest valuation on its property for the purpose of assessment.

To better the present condition, instead of having the utilities assessed by the state board of equalization, the work should be done by a state tax commission, the merits of which are discussed later. In the

absence of a state commission it would seem as though the corporation commission, having at its disposal staffs of accountants and engineers, should be the authority to determine what the value of the tangible property is. A much closer relationship between the rate-making body and the assessing body would seem to be necessary.

REAL ESTATE MORTGAGE TAX

This is a registration tax upon mortgages and is in lieu of the regular ad valorem tax. The rate is based upon the length of the term of the mortgage, and is as follows: 1. A tax of ten cents for each \$100 and each remaining major fraction thereof where the mortgage is for five years. 2. A tax of eight cents for each \$100 and each remaining major fraction thereof, where the mortgage is for four years and less than five years. 3. A tax of six cents for each \$100 or major fraction thereof for mortgages of three years and less than four years. 4. A tax of four cents on each \$100 or major fraction thereof, where the mortgage is for two years and less than three years. 5. A tax of two cents for each \$100 where the mortgage is for less than two years. 6. If the principal of the debt is less than \$100, a tax of ten cents is imposed. This tax is paid to the county treasurer by all corporations and individuals recording mortgages, and is distributed in the same way as is the ad valorem tax.³⁷

GASOLINE EXCISE TAX

The 1923 legislature (S. L., Ch. 239) provided for an excise tax of one cent per gallon on each and every gallon of gasoline consumed in the state. The tax is collected

³⁷Bunn, Supp. Sec. 77306, a to 1.

from the consignees of gasoline. The consignees of all inspected gasoline on or before the fifteenth day of each month file with the state auditor a report under oath showing the number of gallons received by them during the preceding calendar month, and pay the tax. This report is checked up by the oil inspectors and their deputies. A refund is made where the gasoline is transported out of the state. A penalty of 18 percent interest is provided in case of delinquency of payment.

The revenue from this tax is placed in the state highway fund and is apportioned by the commissioner of highways to each county in the state, in the percentage which the present approved state highway mileage within the county bears to the present approved state highway mileage in the state. After being thus apportioned, the money is placed in the state highway construction and maintenance fund in the county, to be used by the commissioners for the purpose of constructing and maintaining state highways and bridges under the direction of the state commissioner of highways.

THE GROSS PRODUCTION TAX

The gross production tax consists of (a) a tax of one-half of one per cent of the gross value produced, less the royalty interest, of asphalt, and of ores bearing lead, zinc, jack, gold, silver and copper; (b) three per cent of the gross value of the production of petroleum or other crude or mineral oil and of natural gas, less the royalty interest. This tax is in lieu of all other taxes, state and local. The owner of the royalty also pays a tax, unless his interest is expressly exempted from taxation. This tax is collected by the auditor, who prescribes forms for reports, requires information, examines books, records

and witnesses, and brings suits for the recovery of the tax.

Two-thirds of the money collected from this tax goes to the general fund, while the other third goes to the county in which the mineral or oil was produced, where it is distributed one-half to the common school fund and one-half to the county road and bridge fund.³⁸

A law of 1923 (Ch. 197) provides that school districts in the state in which lead and zinc or other minerals are mined on Indian lands exempt from the ad valorem tax, which make the maximum legal levy for school purposes, shall be entitled to receive a sum from the gross production tax, which, added to the total revenue accruing to the district from taxation and other sources in the given fiscal year, will equal the estimated needs of the school district for the fiscal year. In no event may the estimated needs of the school district exceed \$35 per child enrolled. The benefits of this tax are not to exceed the total sum of the gross production tax collected by the state auditor from the county.

THE GRADUATED INCOME TAX

The graduated income tax is an annual tax upon all net incomes in excess of \$3,000, graduated according to the amount of income as follows: (a) the first \$10,000 of excess, seven and one-half mills on the dollar; (b) on the next \$15,000 of excess, or any part thereof, fifteen mills on the dollar; (c) on all excesses in addition to these amounts twenty mills on the dollar. Certain deductions from income are allowed, as follows: (a) expense of business, not including personal, living or family expenses; (b) interest; (c) taxes, except special

³⁸S. L. 1916, ch. 39.

benefit assessments; (d) losses not compensated for by insurance; (e) worthless debts; (f) reasonable depreciation. This tax is paid by persons, but not by corporations.³⁹ Mr. C. W. King, assistant attorney general of Oklahoma, criticises this feature of the law quite severely. He says:

“This method has proven defective in that it is next to impossible of enforcement, being commonly evaded in three ways: First, by corporations’ refusal to declare and distribute dividends, re-investing the earnings of the corporation throughout a period of years, then claiming exemption from income taxation upon the ground of ‘converted capital.’ Second, by declaring what is known as ‘stock dividends,’ i. e., additional stock instead of cash to the amount of the dividend to which the share holder would be entitled. Third, when the business assumes large proportions, the principal stockholders, by removing their legal residence to another state gain the exemption enjoyed by non-resident stockholders—the taxable situs of the stock and its dividends being that of the domicile of the owner. Many examples of the latter class may be pointed to and include a number of Oklahoma’s pioneer citizens and builders who had rather reside in Oklahoma than any other state.

“In the opinion of the writer, gained from long experience in tax litigation, the only practical remedy for the above situation is for the income tax act to be amended to include corporations, then to avoid double taxation, the dividends of shareholders should be exempted, the tax thereon having been paid by the corporation.

“The so-called stock dividends should be included within the meaning of the term ‘income’ for taxation

³⁹S. L. 1915, Ch. 164, and S. L. 1917, Ch. 265.

purposes, as well as any other method of distribution of the surplus earnings of the corporation as a substitute for dividends.”⁴⁰

This tax is collected by the auditor, who furnishes blanks, makes all rules and regulations, revises the returns and corrects and adjusts assessments. The tax becomes due and payable the first day of June and becomes delinquent the first day of the next July. The tax goes into the general fund. If the legislature would give to the auditor's office a larger force for the collection of this tax, the revenue derived from it could undoubtedly be increased to a very great extent.

GRADUATED INHERITANCE TAX

This is a transfer tax on property or beneficial interest therein or income therefrom on all transfers to any person or corporation other than those especially exempted. Two main classes of those receiving inheritances are provided by law; viz., near relatives, and other persons. The rates for each of these classes are given in a footnote.⁴¹ This tax is administered by sev-

⁴⁰Harlow's Weekly, Dec. 3, 1920, p. 16.

⁴¹S. L. 1919, Ch. 296, Secs. 3 and 4. These sections read as follows:

“Tax Rate—Near Relatives.

Section 6. Upon a transfer taxable under this Act, of property or any beneficial interest therein, of an amount, as hereinafter stated, to any father, mother, husband, wife, child, brother, sister, wife or widow of a son or husband of a daughter, or any child or children adopted as such in conformity with the laws of this State, of the decedent, grantor, vendor, or donor, or to any child to whom any such decedent, grantor, vendor, or donor for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation of parent; provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten (10) years thereafter, or to any lineal descendant of such decedent, grantor, vendor, or donor, born in lawful wedlock, the tax

eral state authorities. The county court hears and determines all questions arising under the law and determines the amount of the tax. The county court, upon the application of an interested party, including the state auditor, the attorney general, the county attorney, or upon his own motion, may appoint an appraiser to fix the market value. Promulgation of rules and regulations is in the hands of the state auditor. The commissioner of insurance computes contingent estates, while the state examiner and inspector inspects records of the county court to see in what cases the tax is or may be due. The tax is collected by the state auditor. The state auditor may, with the consent of the attorney general, contract with any licensed attorneys

on such transfer shall be at the rate of:

"One percent (1%) on any amount up to and including the sum of Twenty-five Thousand Dollars (\$25,000.00). There shall be exempt from any tax hereunder: to the wife, Fifteen Thousand Dollars (\$15,000.00); to each child of the decedent, Ten Thousand Dollars (\$10,000.00), and to each other relative mentioned above Five Thousand Dollars (\$5,000.00) except to any brother, sister, wife or widow of a son, or the husband of a daughter, there shall be exempt One Thousand Dollars (\$1,000.00.)

"Two percent (2%) on any amount in excess of Twenty-five Thousand Dollars (\$25,000.00) up to and including the sum of Fifty Thousand Dollars (\$50,000.00), except to any brother, sister, wife or widow of a son, or the husband of a daughter, the rate shall be four per cent (3%).

"Three per cent (3%) on any amount in excess of Fifty Thousand Dollars (\$50,000.00) up to and including the sum of One Hundred Thousand Dollars (\$100,000.00) except to any brother, sister, wife or widow of a son, or the husband of a daughter, the rate shall be four per cent (4%).

"Four per cent (4%) on any amount in excess of One Hundred Thousand Dollars (\$100,000.00) except to any brother, sister, wife, or widow of a son, or the husband of a daughter, the rate shall be five per cent (5%)."

"Other Persons."

to collect inheritance taxes due the state from the estate of non-resident decedents and certain others at a commission of not more than 8 per cent.⁴² The tax, less the expense of its collection, becomes a part of the general fund of the state.⁴³

TAX ON TRANSPORTATION AND TRANSMISSION COMPANIES

This is a tax of 4 per cent upon the gross receipts of transportation and transmission companies operating interstate lines, from which are exempted steam railroads, street railroads, parlor and sleeping car companies, pipeline companies and telephone companies.⁴⁴ All transmission and transportation companies, except the ones above mentioned as being exempted, pay this tax. The

⁴²S. L. 1917, Ch. 267.

⁴³S. L. 1915, Ch. 162, Sec. 26.

⁴⁴S. L. 1915, Ch. 107, Subdivision B.

"Upon a transfer taxable under this Act, of property or any beneficial interest therein of an amount in excess of Five Hundred Dollars (\$500.00) to any person or corporation other than those enumerated in Section Six, the tax shall be at the rate of:

"Six per cent (6%) on any amount in excess of Five Hundred Dollars (\$500.00) up to and including the sum of Twenty-five Thousand Dollars (\$25,000.00);

"Seven per cent (7%) on any amount in excess of Twenty-five Thousand Dollars (\$25,000.00) up to and including the sum of Fifty Thousand Dollars (\$50,000.00);

"Eight per cent (8%) on any amount in excess of Fifty Thousand Dollars (\$50,000.00) up to and including the sum of One Hundred Thousand Dollars (\$100,000.00);

"Ten per cent (10%) on any amount in excess of One Hundred Thousand Dollars (\$100,000.00).

"Provided, that the exemptions mentioned in this Chapter when one or more shares of an estate shall consist of property within and property without the State, only such percentage of the exemptions named in this Act shall be allowed as is the percentage within the State of the total value of the shares."

exemptions really reduce this tax to a tax on private car and telegraph companies.

The gross receipts are determined by the state auditor from information furnished him by the companies subject to the tax, after which he makes the levy of the tax. The state auditor also collects this tax. The revenue derived from this tax goes into the general fund.

CORPORATION LICENSE TAX

This is an annual license tax of fifty cents per one thousand dollars on the authorized capital stock of domestic corporations, and one dollar per thousand dollars on the authorized capital stock employed in business in the state of foreign corporations. Public utility companies, banking or trust companies, building and loan associations, insurance companies, and non-profit companies are exempted from this tax. Licenses are issued by the corporation commission, with whom also are filed the statements of these companies. By law, the state treasurer is supposed to collect this tax, but in practice it is collected by the corporation commission. This tax is payable on or before the first day of August of each year and goes into the general fund of the state.⁴⁵ It was held in the case of *Leecraft vs. Texas Company* (281 Federal, 918) that when a foreign corporation was doing business in the Indian Territory at the time of the admission into the union of the state of Oklahoma, and thereafter continued for more than three years prior to the enactment of the statute described above, and had expended large sums in permanent improvements within the state, the levy of license tax higher than that demanded of domestic corporations is a failure to provide equal

⁴⁵R. L. 1910, Secs. 7538 to 7546.

protection of the law, as demanded by the fourteenth amendment to the Federal Constitution. It might possibly be expedient to amend this measure so that the same tax may be levied on both domestic and foreign corporations.

THE MOTOR VEHICLE TAX

This is an annual tax on all motor vehicles in the state and is in lieu of all other taxes. The tax is as follows:

a. \$10.00 for each automobile and motorcycle, the manufacturer's list price of which equals \$500.00 or less, with an additional tax of \$0.75 for each additional \$100.00 in value, or major fraction thereof.

b. Motor trucks are taxed as follows: 1500 lbs. or less carrying capacity, \$15.00 per annum; from 1500 lbs. to 2000 lbs., \$20.00; from 2000 lbs. to 3000 lbs., \$25.00; from 3000 lbs. to 4000 lbs., \$40.00; from 4000 lbs. to 6000 lbs., \$60.00; from 6000 lbs. to 8000 lbs., \$100.00; from 8000 lbs. to 10,000 lbs., \$300.00. The fee is reduced twenty per cent each year for three years on all motor vehicles other than motor trucks of five tons or more capacity, which shall have been licensed two consecutive years, but shall never be less than \$10.00 per annum.

The department of highways receives applications for registration of such vehicles, assigns registration numbers, and furnishes the applicant with identification and number plates, in addition to collecting the tax. This tax (except the fees on the duplicate tags) is distributed as follows: 10 per cent goes to the general revenue fund of the state; 90 per cent goes to the county from which it was paid in, and is there distributed as follows: (a) 25 per cent of the moneys collected from cars or vehicles in cities or incorporated towns goes to the

street and alley fund, (b) one-half of the residue goes to the county road maintenance fund, and (c) the remainder goes to the credit of the state highway construction fund of the county.⁴⁶

In addition to the regular taxes imposed upon motor vehicles, motor carriers are required to pay one-fifth of a cent per mile "on the distance traveled while engaged in the carriage of passengers or freight * * * the mileage to be determined on the basis of the number of trips scheduled per day and computed on the basis of thirty days per calendar month, regardless of whether the vehicle carried out its schedule." The moneys thus collected by the state highway department are pro-rated among the counties of the state in proportion to the number of miles of public highway used by the taxed motor carriers in each county. The funds are used for the construction and maintenance of the highways of streets over which the carriers operate. (S. L. 1923, Ch. 113.)

FIRE MARSHAL TAX

This is a tax of one-fourth of one per cent on gross fire insurance premiums. It is paid by all fire insurance companies to the insurance commissioner. This tax goes to the state fire marshal fund and is used for the expenses of conducting the state fire marshal's department. Any excess over these expenditures is turned into the general fund.⁴⁷

TAX ON PREMIUMS OF FOREIGN LIFE INSURANCE COMPANIES

This is an annual tax on premiums collected in the state, of two per cent of gross premiums less cancellations and dividends paid in cash. It is paid by all for-

⁴⁶S. L. 1919, Ch. 290.

⁴⁷Bunn, Supp., Sec. 8124m.

eign life insurance companies to the insurance commissioner on or before the last day of February of each year. The insurance commissioner pays it into the general fund.⁴⁸

TAX ON PREMIUMS OF FOREIGN FIRE INSURANCE COMPANIES

This is an annual tax of two per cent on gross premiums of foreign fire insurance companies less return premiums and reinsurance. It is paid by all foreign fire insurance companies to the insurance commissioner on or before the last day of February of each year. The insurance commissioner pays it into the general fund.⁴⁹

CRITICISM OF THE TAXATION SYSTEM

From the cursory description which we have given of the taxation system of the State of Oklahoma, it can be readily seen that the system is lacking in most of the requisites necessary for just and efficient taxation. Taxes are administered and collected by many agencies having no relationship to one another. Valuations of real estate are made on no scientific basis; no proper methods are used in the assessment of property; personal property escapes assessment almost altogether; the assessment of public utilities is almost a farce. Manifest injustice is created by such a system as is now in vogue, the burden of the tax being thrown very largely upon lands and unproductive property such as household belongings. Administration of the general property tax by local authorities has made for inefficiency and political corruption. To remedy these defects, it is suggested:

⁴⁸R. L. 1910, Sec. 3426.

⁴⁹Ibid.

(A). That a state tax bureau or commission be created within the proposed finance department discussed in chapter IV. This should be appointed for a fairly long term, thus securing stability of tenure. Salaries should be large enough to attract able men, and none of the members of this bureau should be "ex officio".

(B). This bureau should have under its direct control and supervision all of the taxation of the state.

(C). This bureau should appoint or have under its control all local assessors. All assessors should be required to pass a strict civil service examination.

(D). All equalization of taxation between individuals or taxing districts should be made by this bureau.

(E). A careful system of administrative rules and regulations, as well as methods for valuing property, should be worked out by the bureau, and should be adopted by law and be made uniform throughout the state.

(F). Uniform systems of accounting and auditing for public officers should be introduced, and much more careful attention should be paid by the central authorities to questions of the budgets of all municipal and local subdivisions of the state.

REVENUES DERIVED FROM SOURCES OTHER THAN TAXATION

Beside the taxes described above, the state derives considerable revenue from privilege fees, particularly those required of foreign corporations, fees collected by the secretary of state for the incorporation of companies,

and charges for services rendered by the various departments of the state.⁵⁰

THE CUSTODY AND DISBURSEMENT OF STATE MONEY

The state treasurer is designated by law as the official depository "for all moneys, funds, rentals, penalties, costs, proceeds of sale of property, fees, fines, forfeitures, and public charges of every kind that may be received by any state officer, state board, state commission, or by any employee of either of such officers, boards or commissions by virtue or under color of office." It is the duty of each and every state officer, state board, state commission, and all members or employees thereof to deposit daily with the official depository "all moneys, checks, drafts, orders, vouchers, funds, rentals, penalties, costs, proceeds of sale of property, fees, fines, forfeitures and public charges of every kind received or collected by virtue or under color of office." These moneys when so received by the state treasurer are deposited by him daily in banks designated and qualified as depositories, where they draw interest at a rate of not less than three per cent per annum on average daily balances. This interest must be paid by the depository monthly and when collected is credited to the funds or accounts earning the same.

The governor, the attorney general, and the state treasurer, are authorized and directed to select the banks acting as depositories. All moneys deposited in the official depository are credited to the account of the officer, board, commission or employee thereof so de-

⁵⁰For a complete description of these revenues see, F. F. Blachly, *The Financial System of the State of Oklahoma*, University of Oklahoma Bulletin, New Series No. 208, January 15, 1921, Appendix 1.

positing the same; and there may be withdrawn into the state treasury only such parts as may be due the state or its funds or funds under its management "and in refund of erroneous or excessive collections and credits and in payment of legal claims and charges against any trust deposit or fund included in any such account." All withdrawals of money from the depository are made upon the voucher of the authority making the deposit. This voucher must show on its face, the character of the claim liquidated or the fund or funds to which the money is transferred in the state treasury. When redeemed, these vouchers are delivered monthly to the state auditor and receipted for by him. Official depository vouchers, when presented for redemption to the state treasurer, are registered for payment by him by his writing his official signature as custodian of the official depository and designating on the face of the voucher the bank through which it may be paid. This voucher, when so registered, becomes an official draft of the state treasurer on the designated bank.

All moneys received during any calendar month by any state officer, board, etc., accruing as a part of the state's general revenue or any other appropriated fund, are transferred from the official depository to the fund or funds in the state treasury to which they belong, by the receiving authority on or before the second Monday following the close of the calendar month in which such moneys have been received. All receiving officers must make and file with the state auditor, on or before the second Monday in each month, a verified report, in writing, showing the several sources, classes and amounts of money received by them during the preceding calendar month, as well as an itemized statement of the

amount and purpose of each of the several disbursement or transfer vouchers.⁵¹

Let us summarize as briefly as possible the official depository law. In the first place, all revenues from whatsoever source derived are deposited in the banks designated as official depository banks to the credit of the state treasurer. The state treasurer, upon receiving notice of these deposits, credits the officer, board, commission, etc., with the amount. The money in the official depository is withdrawn in three main ways. First, that money which does not belong to the general revenue fund, or an appropriated fund, is paid out upon vouchers of the authority making the deposit. When registered by the state treasurer, they act as a check upon the bank designated on the face of the voucher by the treasurer. Second, money which is not disbursed by the receiving officer, but which goes to some fund from which appropriations are not made by the legislature, but control over which is in the hands of a board, officer, commission, etc., is transferred from the credit of the officer, board, or commission, to that particular fund. Such funds, however, are held in the official depository instead of being transferred to the state treasury. Third, all money belonging to the general revenue fund, or any other appropriated fund, is transferred monthly to the state treasury, where it is paid out upon warrants issued upon the state treasurer by the state auditor. The state auditor only issues these warrants after approving the payment vouchers sent him by state boards, officers, commissions, etc.

This rather complex system of custody and disbursement of the state's money is due to two main causes.

⁵¹S. L. 1915. Ch. 238.

First, having a great many particular funds for specific purposes; and, second, the fact that all money spent in the state, for every purpose whatsoever, is not under the control of the legislature, but a considerable portion of it is under the control of boards, officers and commissions.

To change this system, it would be necessary to abolish many of the present funds. The revenue that now is received into these funds would then be paid directly into the state treasury to the credit of the general fund. Money to meet the expenditures now paid from these funds should be appropriated directly by the legislature.

The 1923 legislature has made provision for a tax code revision commission (S. L. Chapter 222) consisting of three members appointed by the governor, one of whom shall be the state examiner and inspector. This commission is given authority to employ experts from among recognized authorities. The commission is charged with the duty of making a comprehensive survey of the revenue and taxation system of the state. It is required to make a report of its findings to the governor on or before September 1924, "together with the statutory and constitutional enactments putting the same in force; and shall prepare a detailed and comprehensive report on the same, including a tax code for this state. The commission shall in its report include specifically the statutory and constitutional enactments necessary to put such a tax code into effect, and shall recommend the passage and enactment of the same."

CHAPTER X.

THE FUNDS OF THE STATE

Oklahoma, following the example of many of the other states of the Union, carries on its financial operations through a series of funds. At present Oklahoma has divided its revenues into some eighty separate funds, each one of which, with the exception of the general fund, is applicable to some definite purpose and no other. Perhaps the best way of examining the funds of the state is to classify them into three groups:

I. Funds from which the legislature may appropriate for any purpose.

II. Funds which the legislature has established for a specific purpose.

III. Funds which the legislature has little or no power to change, to control, or to appropriate from; because of conditions laid down by the national government or restrictions embodied in the constitution of the state.

I. FUNDS FROM WHICH THE LEGISLATURE MAY APPROPRIATE FOR ANY PURPOSE

There is only one fund in the state which the legislature uses for general appropriation purposes. This is the general fund. Many specific revenues flow into this fund, as well as all those revenues not definitely allocated to other funds. Out of this fund are paid all the expenses of state government which are not by law paid out of some particular fund. The principal receipts of this fund consist in the state's share of the general property tax, the motor vehicle tax, the express company tax, the bank stock tax, the corporation tax, the public

utility tax, the real estate mortgage tax, and the gross production tax. This fund also receives all the graduated income tax, the graduated inheritance tax, the tax on transportation and transmission companies, the corporation license tax, and the tax on premiums of foreign fire and life insurance companies. In addition, this fund receives a large amount of money from fees, charges and licenses of various state departments and officers, such as the secretary of state, the insurance commissioner, the commissioners of the land office, etc. The interest on daily balances, as well as interest on money held in the official depository, is likewise paid into this fund.

II. FUNDS WHICH THE LEGISLATURE HAS ESTABLISHED FOR A SPECIFIC PURPOSE

Within this main group may be included the following classes of funds:

- A. Revolving Funds.
- B. Working Capital Revolving Funds.
- C. Pension Funds.
- D. Guaranty Funds.
- E. Home Loan Funds.
- F. Funds Derived from Licensing, Examining and Regulating.
- G. Free Scholarship and Text-book Funds.
- H. Agency Funds.
- I. Sinking Funds.

REVOLVING FUNDS

The first class of funds established for a specific purpose consists in a great many so-called revolving funds. In fact, a revolving fund is established for almost every institution in the state. These funds ordinarily consist

of a small appropriation made by the legislature, earnings and profits of state institutions, such as hospitals, etc., and rentals of musical, scientific and engineering instruments under the control of educational institutions. They are used, as a rule, for the purchase of materials, equipment, books, apparatus, supplies, repair of instruments, purchase of live stock, or the payment of minor salaries.¹

There is considerable difference of opinion in respect to the advisability of having revolving funds for state institutions. Those arguing in favor of them maintain that: (a) In many instances receipts from certain

¹These different funds are: University of Oklahoma Revolving Fund; University Hospital Revolving Fund; Panhandle Agricultural School Revolving Fund; Home for the Aged and Infirm Revolving Fund; Murray Agricultural School Revolving Fund; Connor Agricultural School Revolving Fund; Cameron Agricultural School Revolving Fund; State Training School Revolving Fund; Oklahoma Geological Survey Revolving Fund; School for the Blind Revolving Fund; School for Deaf Revolving Fund; Oklahoma College for Women Revolving Fund; Oklahoma State Hospital Revolving Fund; West Oklahoma Orphan's Home Revolving Fund; Oklahoma Hospital for the Insane Revolving Fund; East Oklahoma Hospital for the Insane Revolving Fund; Oklahoma Institute for the Feeble-Minded Revolving Fund; Oklahoma State Home Revolving Fund; State Institute for Deaf, Blind and Colored Orphans Revolving Fund; Northeastern State Normal Revolving Fund; Southeastern State Normal Revolving Fund; East Central State Normal Revolving Fund; Northwestern State Normal Revolving Fund; Central State Normal Revolving Fund; Southwestern State Normal Revolving Fund; Oklahoma State Business Academy Revolving Fund; Oklahoma Military Academy Revolving Fund; School of Mines and Metallurgy Revolving Fund.

All these revolving funds were established by S. L. 1917, Ch. 227.

Agricultural and Mechanical College Revolving Fund. This fund was established by S. L. 1917, Ch. 227, as amended by S. L. 1919, Ch. 239.

Supreme Court Revolving Fund. This fund was established by S. L. 1917, Ch. 134.

State Tubercular Sanatoria Revolving Funds were established by S. L. 1923, ch. 89.

branches or departments of the institution are almost proportionate to the expense of carrying on the work. For instance, in caring for patients in hospitals where a charge is made, the receipts and expenses should nearly balance each other; the greater the expense, therefore, the greater the receipts. In the case of laboratory fees, the expenses are almost directly proportionate to the receipts. It is better, therefore, to provide a fund into which these various receipts can go and be paid out for carrying on the activities, than it is to make an appropriation which, at best, would be only guess work and might be either too large or too small. (b) In the second place it is maintained that by having a revolving fund, an institution has considerably more leeway in the operation of its affairs than if a hard and fast appropriation were fixed by the legislature for the carrying on of minor enterprises. Since it is never possible for an executive to plan ahead with absolute exactness, some such method should be provided for adjusting the finances to actual conditions. (c) In the third place, since these receipts are, as a rule, either for services rendered or material supplied by the institution, they should be used by the institution immediately in paying for these services or paying for materials.

A good many arguments are advanced, likewise, against revolving funds. (a) In the first place the revolving fund system necessitates the keeping of many accounts by the state examiner and inspector, and state auditor, and the state treasurer, as well as by the institutions having these funds, thus requiring a much larger clerical force than would otherwise be necessary. (b) In the second place, having such funds quite independent from control by legislative appropriation makes it difficult to form a scientific budget. In order to pre-

pare a budget which is both complete and clear, all expenditures of every sort should be placed in the budget estimate and should be appropriated for by the legislature. If fees are charged, they should all be paid into the general fund, and expenses in connection with the furnishing of services or materials for which there is a charge should be met out of a definite appropriation for these purposes. The doing away with these funds would simplify accounting, would make possible a budget giving a truer picture of the expenditures of the state, and would give the legislature more actual control over state finance.

Until such a time, however, as the state budget system has been put upon a sure and permanent basis, it may be well to continue these revolving funds; for unless some sort of contingent appropriation were made to each institution which its executive officers could use more or less as an adjustment account, great hardship might result.

WORKING CAPITAL REVOLVING FUNDS

There are three such funds: The State Binder Twine Revolving Fund, the State Prison Revolving Fund, and the Oklahoma State Reformatory Revolving Fund.

The capital of the state binder twine revolving fund consists in appropriations made in 1916 and 1917, totaling \$325,000, for the establishing and maintaining of a binder twine plant in the state penitentiary at McAlester. The increments to this fund consist in the proceeds of the sale of twine, cordage and cotton or jute bagging. The fund is used for the maintenance and operation of the plant, the purchase of raw materials, the carrying, handling and marketing of manufactured products, and the compensation of those engaged in the management

and operation of the plant. The state board of affairs provides for the organization, operation, management and control of the binder twine revolving fund. This fund is expended under the supervision of the governor and the state board of affairs.²

Undoubtedly this fund is not as much under the control of either the auditor or the legislature as it should be. The money is expended from this fund not by means of appropriations, but under the supervision of the governor and the state board of affairs. This means that a relatively large amount of the state's money is under no adequate supervision by the legislature. Nor are payments from this fund under scrutiny of the auditor, as are most of the other state expenditures. It would seem advisable to abolish this fund, to make an annual appropriation for conducting this industry, and to turn all the receipts from this industry into the state treasury to the credit of the general fund.

The capital of the Oklahoma state prison revolving fund and that of the Oklahoma state reformatory revolving fund consist in appropriations made for this purpose, and of all net earnings and the net profits of all business enterprises, occupations, factories, shops, farms, etc., operated by the institutions using the funds. These funds are used for the purchase of materials, live stock, appliances and so forth, needed in the conduct of these industries. These funds are under the control of the state board of affairs. Emergency expenditures are made from these funds by the state board of affairs with the consent of the governor.

With the approval in writing of the governor, a part of either of these funds may be used for carrying on an

²S. L. 1916, Ch. 40.; S. L. 1917, Ch. 44.

enterprise, authorized by law, other than that business or industry from which it was derived. Itemized financial statements must be made each month to the governor. These funds are placed in the state depository, and are paid out on vouchers bearing the verification of the state board of public affairs' chairman, or vice-chairman, and secretary. These vouchers must also bear the signature of the warden, first deputy warden and the chief clerk of the prison for which such revolving fund is created.³

These funds are subject to the same criticism that is made of the institutional revolving funds.

PENSION FUNDS

The two pension funds which the State of Oklahoma has established are the firemen's relief and pension fund and the Oklahoma state teachers' retirement and disability fund. Both of these funds are badly planned.

1. The Firemen's Relief and Pension Fund.

The increments to this fund consist of one-half the annual tax of two per cent on all premiums collected by fire insurance companies, after all cancellations and dividends to policy holders are deducted. This fund is applicable to the payment of pensions to firemen for long service, for permanent disability, hospital nursing, and professional service in case of sickness, and pensions to widows and children of firemen who have lost their lives in service.

Instead of this fund being managed as a unit by the state, it is divided up among the different cities and towns in the state in proportion to the amount of fire insurance premiums paid within them. Thus, as far as the disbursement of the fund is concerned, there is a

³S. L. 1916, Ch. 37; S. L. 1917, Ch. 44, Sec. 2.

fund for each incorporated town and city in the state from which fire insurance premiums are received, and which conforms to certain requirements in respect to making reports. The management of each town's or city's part of the fund is in a board of trustees composed of the mayor or the president of the board of trustees, the clerk and the treasurer of the city or town. This board of trustees provides for the disbursement of the funds, designates the beneficiaries and makes rules and regulations for the management of that part of the fund under its control.⁴

There is at present no administrative law as to how disability shall be determined, no provision in the state law for medical examination or supervision, no law as to service requirements, no general law, or regulation, as to when a person can obtain disability payment, no limitation as to the discretion of the officials as to the amount of benefit, and no check upon the payment of a salary and a pension at the same time in case of disability. As the state is contributing to this fund, it should probably be under the control of a centralized state board, which should be governed by certain administrative laws and rules in respect to the disbursement of these funds.

Another difficulty with this pension scheme is the inflexibility of the amount of money going to various cities. The amount may be too large or too small, as the case may be, (generally the latter) to meet actual requirements. The system is not figured on any exact basis at all, but is simply haphazard. The amount of premiums paid to insurance companies in any city or town at any

⁴S. L. 1913, Ch. 244; S. L. 1917, Ch. 161.

given time may have no relationship to the amount necessary to pay pensions.

Still another difficulty of the system consists in the fact that the members of different fire departments are not themselves required to pay into the fund. If this were done, it would do much toward stabilizing the fund, and enabling it to meet the requirements made upon it. Perhaps the cities themselves, in order to get their share of the fund, should be required to make a certain appropriation to it.

2. The Oklahoma State Teachers' Retirement and Disability Fund.

This fund consists of:

1. A permanent fund composed of:

a. All gifts, grants, devises and bequests in money or in other property.

b. All money or property added by the legislature.

c. All other money or property that may become a part of the fund.

2. A current fund composed of:

a. Interest on investments or deposits on permanent or current funds.

b. One per cent of the annual salary of each teacher who wishes to come under the act and become a beneficiary of the fund.

c. Apportionments from the proceeds derived from the permanent school fund and ad valorem taxes.

d. Such additional amounts appropriated by the legislature as are necessary to meet all annuities, benefits, and other expenses in excess of the revenue above provided for.

This fund is used for paying pensions and temporary

and permanent disability benefits, to those teachers in public or state schools who have complied with its conditions.

The fund is under the management and control of a board of trustees known as the board of trustees of the Oklahoma state teachers' retirement and disability fund. The board is composed of the state superintendent of public instruction, the state treasurer, and three members appointed by the governor of the state from different counties, who are engaged in teaching or the supervision of teaching, and who except for the first appointees, shall have come under the provision of this act. Their term of office is three years. This board of trustees has charge of all proceeds coming to the fund, may receive gifts, grants, devises or bequests, and may exercise the power to transfer and sell property, unless forbidden by the terms of the trust giving the property.

This fund may be used in paying annuities to women who have taught twenty-five years or more in the public schools, ten of which years may have been spent outside the state, and to men who have been in the teaching service of the public schools thirty years or more, fifteen of which years may have been in public schools outside of the state. This annuity is paid in accordance with the following schedule:

For twenty-five years of service for women or	
thirty years for men -----	\$600.00
For twenty-six years of service for women or	
thirty-one years for men -----	620.00
For twenty-seven years of service for women or	
thirty-two years for men -----	640.00
For twenty-eight years of service for women or	

thirty-three years for men-----	660.00
For twenty-nine years of service for women or thirty-four years for men -----	680.00
For thirty years of service for women or thirty- five years for men -----	700.00

Annuities are also paid for temporary or permanent disability, after a teacher has served for a period of twenty years or more. In case a teacher is retired for disability before meeting the conditions for permanent retirement, this annuity is paid only until the disability is relieved or removed. A medical examination is made at the expense of the teacher on the demand of the board of trustees to determine when the disability is removed. "No benefit for disability shall be paid for less than one-half of a school year." The schedule according to which disability benefits are paid is as follows:

For twenty years of service, man or woman.....	\$350.00
For twenty-one years of service, man or woman....	375.00
For twenty-two years of service, man or woman.....	400.00
For twenty-three years of service, man or woman....	425.00
For twenty-four years of service, man or woman....	450.00
For twenty-five years of service, man or woman....	475.00
For twenty-six years of service, man or woman....	500.00
For twenty-seven years of service, man or woman....	525.00
For twenty-eight years of service, man or woman....	550.00
For twenty-nine years of service, man or woman....	575.00

These annuities are paid quarterly.

Provision for a part payment of annuities is also made for persons who have paid into the fund for a less number of years than they have served in the school system.

Chapter 79, S. L. 1919, provides: "Such annuities shall be paid upon the order of the Board of Trustees in four equal payments, as follows: On January 1st, (the April

payment is omitted from the law), July 1st, October 1st, of each year, provided further, that any woman teacher entitled to annuity in accordance with the schedule of this section, that the annuity which she shall receive shall be as follows:

“1st. Any woman teacher who is entitled to funds as provided in this act and who has paid only the last five years’ assessment shall be entitled to only 40 per cent of the amount of annuity in the schedule.

“2nd. Any woman teacher who is entitled to funds as provided in this act and who has paid only the last ten years’ assessment shall be entitled to only 55 per cent of the amount of annuity in the schedule.

“3rd. Any woman teacher who is entitled to funds as provided in this act and who has paid only the last fifteen years’ assessment shall be entitled to only 70 per cent of the amount of annuity in the schedule.

“4th. Any woman teacher who is entitled to funds as provided in this act and who has paid only the last twenty years’ assessment shall be entitled to only 85 per cent of the amount of annuity in the schedule.

“5th. Any woman teacher who is entitled to funds as provided in this act and who has paid the last twenty-five years’ assessment shall be entitled to the full amount of annuity in the schedule; provided, that any man teacher entitled to annuity in accordance with the schedule of this section, that the annuity which he shall receive shall be as follows:

“1st. Any man teacher who is entitled to funds as provided in this act and who has paid only the last five years’ assessment shall be entitled to only 40 per cent of the amount of annuity in the schedule.

“2nd. Any man teacher who is entitled to funds as provided in this act and who has paid only the last ten

years' assessment shall be entitled to only 52 per cent of the amount of annuity in the schedule.

"3rd. Any man teacher who is entitled to funds as provided in this act and who has paid only the last fifteen years' assessment shall be entitled to only 64 per cent of the amount of annuity in the schedule.

"4th. Any man teacher who is entitled to funds as provided in this act and who has paid only the last twenty years' assessment shall be entitled to only 76 per cent of the amount of annuity in the schedule.

"5th. Any man teacher who is entitled to funds as provided in this act and who has paid only the last twenty-five years' assessment shall be entitled to only 88 per cent of the amount of annuity in the schedule.

"6th. Any man teacher who is entitled to funds as provided in this act and who has paid the last thirty years' assessment shall be entitled to the full amount of annuity."

The provisions of this law are faulty in a number of places. In the first place, it is extremely unlikely that the permanent fund will receive any particular increments other than money or property added by the legislature. Experience has proved that not many gifts and bequests are given to such funds. It will be necessary for the legislature itself, therefore, to contribute practically all of the permanent part of this fund. The current fund also, will undoubtedly prove entirely inadequate to meet the demands which will within a few years be placed upon it. The interest on investments or deposits will amount to little. One per cent of the annual salary of any teacher who comes under this act will not provide for an adequate pension or disability benefit. The best of authorities agree that it requires four or five per cent of a person's salary to provide adequately for such pen-

sion or disability benefits, even when an equal amount is paid into the pension fund by the state or some other agency.

Since this fund is entirely voluntary, probably a majority of the teachers accepting its provisions will be those who have been rather long in service. This will mean that they will pay into the fund only a short time before their retirement and yet will receive a much larger proportion of the pension than the number of years of their payment bears to the time of their service. For instance, a woman having taught twenty years may start paying into the fund. She may pay into the fund one per cent of her salary for five years, and then retire, receiving forty per cent of the amount of annuity provided in the schedule for such length of service. Thus, while she has paid in only twenty per cent of the amount that her assessments would have been during her term of service, she will receive forty per cent of the standard annuity. Moreover, the money which she has paid into the fund will only have been compounding for five years, whereas if she had begun her payments at the time of beginning her service, they would have been compounding for twenty-five years. Pension fund experts agree that in case payments are only made for the last few years, before the pension is paid, the assessment should be made at a much higher rate than in other instances.

The law provides for benefit or disability annuities to be paid in case of a longer term of service than the minimum time for retirement from service. The question then arises as to whether or not, in case a woman teacher is permanently disabled after twenty-five years of service, (the time at which she may retire), she can receive both the service annuity and the disability benefits for the rest of her life. Since the retirement for men does not start until

after thirty years of service, and since the schedule of benefit disabilities makes no provision for disability payment after twenty-nine years of service, it is not possible, under the law, for a man teacher to receive both payments.

Because of the facts that payments into the fund are too small and that teachers are permitted to receive benefits disproportionate to the amount of money they have paid, in order to meet the obligations for which the fund is responsible, it will be necessary for the state to make an unusual demand upon the permanent school fund, as well as ad valorem school taxes collected by the state. While this demand may be small for a few years, as the fund becomes better known and more firmly established, its membership will grow, and the heavy liabilities incurred from this large membership offset by the small amounts paid in will form a great drain on the resources of the common school fund as well as on the ad valorem school taxes collected by the state. There might also be a question as to the constitutionality of paying out the income of the permanent school fund for this purpose. The Enabling Act, Sections 7 and 9, granted Sections 16 and 36 "for the use and benefit of common schools", whereas this act provides for the payment of annuities "to persons engaged in teaching or in the supervision of teaching in the public schools of the state."

Again, the statement in the law that "No benefit for disability shall be paid for less than one-half of the school year," is ambiguous. Is no disability to be paid until a person has actually been disabled for one-half a school year, or does the law mean that one-half of a year's annuity shall be paid for any disability?

The law may be considered lacking in that it does not provide for any amount of disability payment, unless a

teacher has served for at least twenty years. It is also lacking in that it makes no provision for any portion of the amount a teacher has contributed to be returned in case of withdrawal, dismissal or resignation at any time before the pension is due, nor is any provision made for the payment of any part of that money the teacher has actually contributed to the fund, to dependents or legal heirs in case of the death of the teacher, even after the length of service requirements have been fulfilled.

Due to the extreme importance of having an adequate and competent pension system for the teachers of the state, the legislature should reconsider this fund very carefully and make such changes as seem to be necessary.

GUARANTY FUNDS

Within this class Oklahoma has two funds: The Home Loan Guaranty Fund and the Depositors' Guaranty Fund.

1. The Home Loan Guaranty Fund.

This fund was established in 1919 (S. L. 1919, Ch. 194, Sec. 2). This fund is established for the security and guarantee of any second mortgages and the notes thereby secured, issued through the commissioners of the land office under the home loan fund, which may be held by private individuals or corporations.

That is, this fund is to be used exclusively to secure second mortgages in case the amount received at the time of foreclosure is not sufficient to satisfy the claim. This fund consists of the express company and other company refunds for overcharges which formerly escheated to the state,⁵ and such other funds as may be

provided by law. This fund will be discussed later on in connection with the home loan fund.

2. The Depositors' Guaranty Fund.

This fund was established⁵ for the purpose of paying depositors of banks that have failed. The increments to this fund consist of: (a) An annual assessment against the capital stock of each and every bank organized under the laws of Oklahoma, equal to one-fifth of one percent of its average daily balances during its continuance as a banking corporation. After the fund amounts to as much as two percent of the average daily deposits of these state banks, over and above all certificates of indebtedness, or other obligations chargeable against the fund, the annual assessment ceases, and thereafter it is the duty of the state banking board to maintain this fund to an amount of two percent of such average daily deposits by making, from time to time, assessments against the capital stock of all state banks. These assessments, however, shall not exceed one-fifth of one percent of the average daily deposits in any one year. The state banking board is given express authority to make these assessments, and also, to make all rules and regulations not inconsistent with the laws of the state for the purpose of collecting and equalizing the assessments among the state banks. (b) "If at any time, the depositors' guaranty fund on hand shall be insufficient to pay the depositors of failed banks, or other indebtedness properly chargeable against the same, the Banking Board shall have authority to issue certificates of indebtedness to be known as 'Depositors' Guaranty Fund Warrants of the State of Oklahoma', in order to liquidate the deposits of failed banks, or

⁵S. L. 1913, Ch. 10.

any other indebtedness properly chargeable against said Depositors' Guaranty Fund."^o

These warrants bear six percent interest payable annually, are issued in such form as is prescribed by the banking board, and constitute a charge and first lien upon the depositors' guaranty fund when collected, as well as a first lien against the capital stock, surplus, and undivided profits of each and every bank operating under the banking laws of the State of Oklahoma, to the extent of the liability of any such bank to the guaranty fund. The banking board has authority to negotiate or otherwise dispose of such depositors' guaranty warrants, at not less than par, in such manner as it may see fit, to facilitate the liquidation of failed banks.

The 1923 Legislature repealed the bank guaranty law, with the proviso that obligations in force at the time of the passing of the act should not be affected. (S. L. 1923, ch. 137.)

HOME LOAN FUNDS

The State of Oklahoma, in connection with its land office department, has two home loan funds.

1. The Home Ownership Fund.

The first of these is known as the home ownership fund. This fund was established for the purpose of assisting farmers to pay for homes; pay off existing mortgages upon their homes; or make permanent improvements upon their home farms. The loans from this fund must be secured by first mortgages. The cash value of the land without the improvements must be double the amount of the loan. The capital and increments of this fund consist in: (a) moneys on hand or that may hereafter be received from the sale of section 13 or lands taken in lieu

^oS. L. 1913, Ch. 22.

thereof; (b) moneys on hand or that may be received from the sale of the New College Fund lands⁷; (c) moneys arising from the sale for not less than par and accrued interest of any or all portions of the notes and securities taken for the sale price of the lands or unpaid portion thereof, the sale of these notes and securities being made absolutely and without recourse; (d) moneys arising from the sale of bonds drawing not to exceed four percent per annum interest, payable semi-annually; the commissioners may pledge for the payment of the principal and interest on these bonds, all notes and securities taken for the sale price of lands or unpaid portions thereof. These bonds shall not at any time exceed seventy-five percent of the face value of the unpaid portion of the principal on these notes; (e) the commissioners are further authorized to issue and sell, at not less than par value, bonds drawing not to exceed four percent per annum interest payable semi-annually, and to pledge for the payment of the principal and interest on these bonds, all notes and mortgages taken for loans from these funds. The amount of the bonds so issued, sold and outstanding, shall not, however, at any time, exceed ninety percent of the face value of the unpaid portion of these notes⁸. Each series of these bonds is payable as follows: twelve and one-half percent in four years from the date of issue; twelve and one-half percent in seven years; twelve and one-half per cent in ten years; fifteen per cent in fifteen years; twenty percent in eighteen years and fifteen percent in twenty years. (This leaves 12 ½ percent not accounted for.)

Not more than \$2,000.00 of this money can be loaned to any one individual or family. The loans are secured

⁷S. L. 1915, Ch. 34.

⁸S. L. 1917, Ch. 130

by first mortgages on farm lands upon which the borrower resides and which he holds as his homestead, the cash value of which, disregarding all improvements, must be at least double the amount of the loan.

Notes are drawn to run for twenty years. A payment of four percent of the full face value of each note is made semi-annually. At each payment, interest at the rate of five percent per annum upon the unpaid balance of such note is deducted from the amount paid, and the remainder is credited upon the principal of the loan⁹.

2. The Home Loan Fund.¹⁰

The home loan fund was established in 1919 for the purpose of encouraging home ownership, by making loans designed to enable tenant farmers to secure homes. In order to make these loans the legislature made an appropriation of \$250,000 from the general fund, to be placed under the control of the commissioners of the land office. Any person who has been a *bona fide* resident of Oklahoma for two years or more, "who desires to buy a farm, and who has an opportunity to buy a farm and who is not the owner of more than forty (40) acres of land," may apply for a loan. After an inspection is made of the farm sought to be purchased by the applicant, and appraisal is made of it, a first loan of fifty percent of the appraised value of the farm is made from the new college fund. This loan is secured by a first mortgage running for a period of twenty years and notes drawn to run for the same period. A payment of four percent of the face value of each note is to be made semi-annually. At each payment, interest at the rate of five percent per annum upon the unpaid balance of such note is deducted from the amount paid, and

⁹Ibid.

¹⁰S. L. 1919, Ch. 194.

the remainder is credited upon the principal of the loan.

The commissioners of the land office are given authority to loan any part of the remaining purchase price of this land from the home loan fund. Here again notes are drawn to run for a period of twenty years, and a payment of four percent of the face value of each note is made semi-annually. At each payment interest at the rate of five percent per annum upon the unpaid balance of such notes is deducted from the amount paid and the remainder is credited to the principal of the loan. At the option of the maker of such notes, either the first or the second mortgage or any part thereof may be paid at any interest-paying period. The commissioners of the land office are forbidden to aid any person in securing more than 160 acres of land under the provisions of this act. No applicant will be permitted to secure a loan from the home loan fund of more than \$2,000. Applications for loans are made to local boards in each county, consisting of three members, appointed by the governor. The duties of this board are to receive applications for loans, and to make recommendations to the school land commission as to the "moral character, integrity, industry and ability of the applicant."

In order to increase the capital of this fund, the commissioners of the land office are authorized to sell second mortgage notes, or pledge the same, at any time for not less than par value and accrued interest, or to issue and sell bonds against these notes in the same manner as is provided by the home ownership law.¹¹ The money so obtained from the sale of these bonds, or from the sale or pledge of notes, may be reloaned. "And as often as funds are needed for the loans, and notes are

¹¹S. L. 1917, Ch. 130.

taken on second mortgages, additional bonds shall be issued and sold, and the proceeds likewise reloaned, or notes sold or pledged."

By means of this fund, used in connection with the New College Fund, an individual may secure all of the purchase price of a farm from the state, since the state loans fifty percent of the value of the land from the New College Fund, and may loan the remaining fifty percent from the Home Loan Fund. The state, by establishing this fund, therefore, has quite definitely embarked upon the policy of lending money equal to the full value of land, in order to secure home ownership.

Whether or not such loans are expedient is somewhat problematical. The advantages of such a plan might be the gradual doing away with tenant farming, which is altogether too prevalent in the state of Oklahoma. With the present prices of land, however, the maximum loan would not enable an individual to purchase, as a rule, more than forty acres of land. It is somewhat doubtful whether forty acres of land is large enough to carry on properly farming operations, particularly the raising of wheat, cotton, or cattle. It might tend to break the state up into a great many small, and therefore unprofitable, farms. Moreover, the \$250,000 appropriated for such loans is only a drop in a bucket in comparison to the amount required to meet applications. Through the selling of the second mortgage notes and the issue of bonds against these notes, further money can, of course, be obtained. In this way, the state's credit could be pyramided almost indefinitely, subject only to the fact that people may not wish to buy such securities. In case they will buy such securities, the state's credit is loaned on a rather precarious basis; and in case people will not buy them, the \$250,-

000 would go a very short way toward accomplishing the purposes of this act.

It is true that a guaranty fund has been established in connection with this fund, which guarantees the payment of these mortgages in case the property, when sold under proceedings of foreclosure, is insufficient to do so. A person holding a second mortgage is paid in full by the state upon the surrender of the mortgage to the state. The mortgage and the defaulted notes given in connection therewith become the property of the state. In case of a series of hard years, therefore, the state might find itself forced to pay from the guaranty fund, a large difference between what the property would bring at a forced sale and the mortgage upon the property. Since the increments to the guaranty fund are not particularly large, the state might find itself liable for the payment to second mortgage holders of a very large sum of money. This might be particularly so at the present time, when loans are made on inflated land values. The state might find itself greatly burdened, therefore, in guaranteeing these notes and mortgages, and might find itself the owner of much land which it could not sell for as much as it had invested in it. Another question that should be asked in respect to the home loan fund: Will the four percent semi-annual payment, with interest at the rate of five percent per annum upon the unpaid balance, deducted from the amount paid, be sufficient to attract buyers for these bonds? If not, the \$250,000 laid aside for this purpose would do little good in relieving the tenancy problem.

FUNDS DERIVED FROM THE RECEIPTS FROM LICENSING, EXAMINING AND REGULATING

The state has placed its receipts derived from examining, licensing and regulating in some fourteen separate funds. The money received from such service is usually made applicable for the payment of salaries and expenses of the commissions doing the work. As a rule, the money is paid into the official depository of the state and from there is paid out upon the warrant of the board or commission having charge of the fund.

One of the main difficulties of having funds set aside for these purposes, beside those given in connection with the revolving funds, is the fact that a considerable amount of the state's money may be held idle in these funds at the same time that the state is short of money in other funds and so the state must borrow to replace them. It often happens that the state may have hundreds of thousands or even several millions of dollars of money on deposit belonging to the various funds on which it receives only three percent interest and yet it may have issued warrants drawing six percent interest totaling hundreds of thousands of dollars on other funds, the income of which is temporarily unavailable.

FREE SCHOLARSHIP FUNDS

For the purpose of placing practical training in agriculture within the reach of children in the state and of stimulating interest in scientific farming, the state has established a free scholarship fund in the Agricultural and Mechanical College.¹² All students are eligible to take examinations for these scholarships who have com-

¹²S. L. 1919, Ch. 26.

pleted the common school course, who have taken their examinations and who have received their diplomas, or are entitled to diplomas. The examinations are given by the Agricultural and Mechanical faculty. The students making the first and second highest general average in each county are awarded these scholarships, while those making the third and fourth general averages are designated as alternates. Similar scholarships are awarded negro children in the Colored Agricultural and Normal University, and five thousand dollars a year is given by the state for this fund.¹³ Persons receiving the benefit of these scholarships obligate themselves to be farmers for at least such period of time as they shall have been students of the Agricultural and Mechanical College.¹⁴ The state has appropriated \$20,000 for the fiscal year 1922-23 for this purpose.

STATE TEXT BOOK FUND

A law of 1923 (S. L. Ch. 175) establishing the state text book fund, provides that the net amount of money collected by the state insurance commissioner from all foreign insurance companies (except fire insurance companies) doing business in the state of Oklahoma shall be paid into this fund. The moneys so collected are to be used in purchasing text books in basic subjects for all children enrolled in the public schools from the first to the eighth grades inclusive. The purchase and management of the free text books is under the control of the state superintendent of public instruction, subject to the approval of the state board of education.

AGENCY FUNDS

The state has one agency fund—that is, a fund for

¹³S. L. 1921. Ch. 196.
¹⁴S. L. 1921. Ch. 15.

which the state acts simply as an agent—the highway construction fund.¹⁵ This fund is derived from an ad valorem tax of one-fourth of one mill on all property of the state subject to taxation on an ad valorem basis. This money is merely held in trust by the state for the use of the various counties for highway construction purposes, and is distributed in proportion to the amount that is received from them. That is, each county receives the amount that the one-fourth of one mill levy, applied to its assessed valuation, will produce.

SINKING FUNDS

These funds are sufficiently described in the chapter on state indebtedness, Chapter XI.

III. FUNDS WHICH THE LEGISLATURE HAS LITTLE OR NO POWER TO CHANGE, TO CONTROL, OR TO APPROPRIATE FROM, BECAUSE OF CONDITIONS LAID DOWN BY THE NATIONAL GOVERNMENT OR RESTRICTIONS EMBODIED IN THE STATE CONSTITUTION.

AGENCY FUNDS

The state has several funds for which it acts to some extent as an agent for the national government. These are:

1. Fund for Agricultural Experimentation.
2. Fund for the Endowment and Support of Agricultural Colleges.
3. Fund for Co-operative Agricultural Extension Work.
4. Vocational Education Fund.
5. Fund for Aid to Highways.
6. Maternity and Infant Welfare Fund.

¹⁵S. L. 1916, Sec. 7.

FUND FOR AGRICULTURAL EXPERIMENTATION

This is an annual appropriation made by the United States for the purpose of promoting practical information and exciting interest in agriculture.¹⁶ In case the state has only one A. & M. College and no other experiment station, the whole sum goes to it. If the state has two or more experiment stations or agricultural colleges, the appropriation is divided equally among them unless the legislature directs otherwise. Where the state has separate experiment stations it may apply this money to them alone. Where it has agricultural experimentation in connection with other schools or colleges the legislature may apply such money to these. In Oklahoma all the money goes to A. & M. College. Oklahoma receives some \$30,000 annually from this fund.

FUND FOR THE ENDOWMENT AND SUPPORT OF AGRICULTURAL COLLEGES

This item consists of an annual appropriation from the national government of \$50,000 to each state and territory in the United States. \$45,000 of this money goes to A. & M. College and \$5,000¹⁸ goes to the Colored A. & N. U. This money can only be used for instruction in agriculture and mechanical arts, in the English language, mathematics, physics, natural science and economics. No portion of this money can be used for buildings. An Act of March 4, 1907, provides that agricultural colleges may apportion this money for providing courses for the special preparation of instruc-

¹⁶Barnes Federal Code, 1919, Secs, 8236-8256; R. L. Okla., 1910, Sec. 7974. 7984-7985.

¹⁷Barnes Federal Code, Secs. 8400-8412.

¹⁸R. L. Okla. 1910 Sec. 7986.

tors for teaching the elements of agriculture and mechanical arts.

FUND FOR CO-OPERATIVE AGRICULTURAL EXTENSION WORK

This is a federal appropriation of \$480,000 for each year, \$10,000 of which is paid annually to each state. There was also an appropriation of an additional \$600,000 for the fiscal year following that in which the foregoing appropriation first became available, 1915, and for each year thereafter for seven years, a sum exceeding by \$500,000 the sum appropriated for each preceding year; and for each year thereafter there is permanently appropriated the sum of \$4,100,000 in addition to the \$480,000 before provided. These additional sums are allotted annually to each state by the secretary of agriculture, "In the proportion which the rural population of each state bears to the total population of all the states, as determined by the next preceding federal census." No payment other than the \$10,000 payment is made to any state, however, until an equal sum has been appropriated for that year by the legislature of the state, or has been provided by state, county, college, local authority, or individual contributions from within the state for the maintenance of the co-operative agricultural extension work provided for in this Act.¹⁹ No portion of this money can be applied directly or indirectly to the purchase, erection, preservation or repair of any building or buildings, or the purchase or rental of lands or in college-course teaching, lectures in colleges, promoting agricultural trains, or any other purpose not specified in the Act. Not more than five percent of each annual appropriation shall be applied to the printing or distribution of publications. It is made the duty of each of said colleges annually, on or

¹⁹Barnes Federal Code 1919, Sec. 8421-8439.

before the first day of January, to make to the governor of the state in which it is located a full and detailed report of its operations in the directing of extension work. A copy of this report must be sent to the secretary of agriculture and the secretary of the treasury of the United States.

VOCATIONAL EDUCATIONAL FUND

This is an annual payment by the national government to the states for the purpose of paying the salaries of teachers, supervisors and directors of agricultural subjects; teachers of trade, home economics and industrial subjects, and for the purpose of training teachers in these subjects.²⁰ This money is appropriated as follows: 1. For cooperation in paying teachers in agricultural subjects. The sums appropriated for the fiscal year under consideration and subsequent years are as follows: For the fiscal year ending June 30, 1921, the sum of \$1,250,000; for the fiscal year ending June 30, 1922, the sum of \$1,500,000; for the fiscal year ending June 30, 1923, the sum of \$1,750,000; for the fiscal year ending June 30, 1924, the sum of \$2,000,000; for the fiscal year ending June 30, 1925, the sum of \$2,500,000; for the fiscal year ending June 30, 1926, and annually thereafter, the sum of \$3,000,000. These sums are allotted to the states in the proportion which their rural population bears to the total rural population in the United States. During the fiscal year 1919-20, Oklahoma received for paying teachers in agricultural subjects \$27,092.81; and for the year 1920-21 she received \$33,866.03.

2. For paying teachers in trade, home economics and industrial subjects. For the fiscal years we have under

²⁰Barnes Federal Code 1919, Sec. 8421-8431.

consideration and for subsequent years the amounts appropriated are as follows: For the fiscal year ending June 30, 1921, the sum of \$1,250,000.00, for the fiscal year 1921-22, the sum of \$1,500,000; for the fiscal year 1922-23, the sum of \$1,750,000; for the fiscal year 1923-24, the sum of \$2,000,000; for the fiscal year 1924-25, the sum of \$2,500,000; for the fiscal year 1925-26, the sum of \$3,000,000, and annually thereafter the sum of \$3,000,000. This money is allotted to the states in the proportion which their urban population bears to the total urban population of the United States, not including outlying possessions, according to the last preceding United States census. Not more than twenty per cent of the money appropriated under this Act for the payment of salaries of teachers of trade, home economics and industrial subjects for any year shall be expended for salaries of teachers of home economics subjects.

3. For cooperation in the training and preparation of teachers. For the purpose of cooperating with the states in preparing teachers, supervisors and directors of agricultural subjects and teachers of trade, industrial and home economics subjects, there are appropriated for the fiscal years we have under consideration and subsequent fiscal years, the following amounts: For the fiscal year ending June 30, 1921 and annually thereafter, the sum of \$1,000,000. These sums are allotted to the states in the proportion which their population bears to the total population of the United States, not including outlying possessions, according to the last preceding census. This money granted to the states under the vocational educational fund is granted under the provision that the states pay dollar for dollar of the amount granted by the national government.

FUND FOR AID TO HIGHWAYS

In 1916 the Federal Government instituted the plan²¹ of cooperating with the states in the construction and maintenance of rural post roads. An act of 1921²² extended the plan of work to provide for aid to state highway systems, preferably "such projects as will expedite the completion of an adequate and connected system of highways, interstate in character." Approval of a projected highway system, and the surveys, plans, specifications and estimates therefor, shall be given by the secretary of agriculture, who administers the federal aid. The amount paid to any state under this act is not to exceed fifty per cent of the "total estimated cost" of a highway project²³; and each state, before its project is approved, "shall make provisions for state funds required each year for construction, reconstruction, and maintenance, of all Federal-aid highways within the State, which funds shall be under the direct control of the State Highway Department." Payments of federal money are made "to such official or officials or depository as may be designated by the state highway department and authorized under the laws of the state to receive public funds of the state." For the fiscal year ending June 30, 1922 there was appropriated \$75,000,000. After deducting two and one-half percent of this money for administrative research and investigation, the secretary of agriculture apportions the remainder among the several states: one-third in the ratio which the area of each state bears to the total area of all the states; one-third in the

²¹Barnes Federal Code, Secs. 8421-8431.

²²Act of Congress, Nov. 9, 1921.

²³States containing unappropriated public lands exceeding five percent of their total area may receive a slightly larger appropriation.

ratio which the population of the state bears to the total population of all the states; and one-third in the ratio which the mileage of rural delivery routes and star routes bears to the total mileage of rural delivery routes and star routes.

The 1917 session of the Oklahoma legislature passed an act²⁴ accepting the terms of the federal road act of 1916 and making appropriations to meet federal apportionments to and including the fiscal year ending June 30, 1919. The 1919 session passed an act²⁵ authorizing the state treasurer to handle moneys appropriated by counties, townships, road districts, cities, and other subdivisions of the state, which might desire "to contribute toward the building of federal aid road projects." No appropriation was made at this session. No additional state appropriations have since been made, but an extraordinary session of the legislature in 1920 reduced the amount of money which it was understood should be reappropriated from unused funds; and the extraordinary session in 1921 undid this work by appropriating a sum equal to said reduction.²⁶

Under the federal act of 1916, then, the state as a whole has appropriated relatively little to the fund for aid to highways, but many subdivisions of the state have contributed to this fund in order to assure to themselves a share in the highway projects. It remains to be seen what action the state will take in regard to the federal aid act of 1921 (Act of Nov. 9, 1921; 42 Fed. Stat. 212.)

²⁴S. L. 1917, House Joint Resolution No. 16.

²⁵S. L. 1919, Ch. 311.

²⁶S. L. 1921, Ch. 245.

MATERNITY AND INFANT WELFARE FUND

An Act of Congress of Nov. 23, 1921 provides that the sum of \$240,000 each year is to be equally apportioned among the several states for a period of five years for "promoting the welfare and hygiene of maternity and infancy." An additional sum of \$1,000,000 annually thereafter for a period of five years is appropriated. Five thousand dollars of this appropriation is given to each state and the balance is apportioned among the states in the proportion which their population bears to the total population of the United States. This apportionment is accompanied with the proviso, "That no payment out of the additional appropriation herein authorized shall be made in any year to any State, until an equal sum has been appropriated for that purpose by the legislature of such state for the maintenance of the services and facilities provided for in this act."²⁷ States desiring to secure the benefits of this Act must submit plans to the Children's Bureau for approval, and must also make reports concerning their operations and expenditures.²⁸

ENDOWMENT FUNDS

Another class in Group III consists of Endowment Funds. These are:

- I. The Common School Fund.
- II. The Union Graded and Consolidated School District Fund.
- III. The New College Fund.
- IV. Section 13 Fund—State Educational Institutions Fund.

²⁷Act of Nov. 23, 1921, Sec. 2. U. S. Compiled Stat., 9188½.

²⁸Ibid. Secs. 4 and 8.

V. The Public Building Fund.

THE COMMON SCHOOL FUND

The most important of these funds is the Common School Fund.²⁹

This fund was established by the national government when it granted sections 16 and 36 in each township in Oklahoma Territory or the proceeds thereof for the use of common schools.³⁰ The national government also gave five million dollars to this fund in lieu of sections 16 and 36 in the Indian Territory,³¹ and five percent of the proceeds of the sales of public lands lying within the state.³² This fund has been further augmented by receipts arising from bonuses, royalties and rentals on oil and gas leases belonging to the fund;³³ by certain properties falling to the state through escheat;³⁴ appropriations that have been made by the legislature, part of the optometry fees,³⁵ and last but not least, by one-fourth mill tax on all property in the state assessed on an ad valorem basis.³⁶

This ad valorem tax is levied by the state board of equalization and is apportioned among the common schools of the state on the basis of the number of children of school age in each of the common school districts of the state.³⁷ The capital of this fund may be increased but not diminished, and no part of this fund may be diverted to any purpose other than the support and main-

²⁹Const. Art. XI, Sec. 2.

³⁰Organic Act, Sec. 18.

³¹Enabling Act, Sec. 7.

³²Enabling Act, Sec. 11.

³³Const. Art. XI, Sec. 3; R. L. 1910, Secs. 7195-7203.

³⁴S. L. 1919, Ch. 172.

³⁵Bunn's Supplement, 1918, Sec. 6914g.

³⁶R. L. 1910, Sec. 7374.

³⁷Const. Art. XI, Sec. 3.

tenance of the common school system of the state. The apportionment of the money to the counties is made by the superintendent of public instruction, monthly, being based on the school census as taken January 15th of each year. The commissioners of the land office then apportion the income derived from the fund among the several counties of the state.

THE UNION GRADE AND CONSOLIDATED SCHOOL DISTRICT FUND

This fund was established by an Act of Congress in 1897,³⁸ and consists of lands given by the federal government embracing Section 33 in each township in Greer County, funds derived from sale of such lands, and proceeds arising from rentals and sales accrued. This fund is to be used exclusively to assist in paying for and constructing buildings in consolidated or union graded school districts.³⁹ The funds must be appropriated in such a way as will result in a fair and equitable distribution among the counties of the state in proportion as much as possible to the scholastic population outside of cities of the first class. No district can receive an appropriation of over \$2,500 from this fund.

THE NEW COLLEGE FUND

The New College Fund was established by Congress by Section 12 of the Enabling Act and was accepted by the State of Oklahoma by the Constitutional Convention.⁴⁰ This fund is divided among ten institutions, for each one of which the state carries a separate fund. This

³⁸Vol. 29, page 490, U. S. Statutes at Large.

³⁹S. L. 1911, Ch. 112.

⁴⁰Const. Art. XI. Sec. 1.

fund consists in land in lieu of internal improvements and swamp lands as follows:

(1) For the benefit of Oklahoma University, 250,000 acres.

(2) For the benefit of the University Preparatory School, 150,000 acres.

(3) For the benefit of A. & M., 250,000 acres.

(4) For the benefit of the Colored A. & N. U., 100,000 acres.

(5) For the benefit of the Normal Schools, 300,000 acres.

No part of the proceeds shall be used for the support of any religious or sectarian college or university. The capital of this fund cannot be diminished and only its income can be used. Educational institutions receiving these funds must be under the exclusive control of the state.

SECTION 13 FUND—STATE EDUCATIONAL INSTITUTION FUND

This fund, like the new college fund, is divided among the various higher educational institutions of the state. It was established by Act of Congress in 1897⁴¹ and was accepted by Oklahoma in her Constitution.⁴² The fund consists in the "use and benefit" of Section 13 which has been granted for this purpose in every portion of the state. This fund consists of (a) proceeds from sale of lands; (b) indemnity lands granted in lieu of these sections; (c) income, interest and rentals from these sections, or from moneys received from their sale. This money was to be appropriated among the different educational institutions according to the will of the legis-

⁴¹Vol. 29, page 490 U. S. Statutes at Large.

⁴²Const. Art. XI, Secs. 1, 5, and 6.

lature. By Chapter 249 of the Session Laws of 1917, the interest, income, rentals and proceeds of the above lands were to be divided as follows: one-third was to go to the Agricultural & Mechanical College and the Colored Agricultural and Normal University, of which the A. & M. College was to receive nine-tenths and the Colored A. & N. U. was to receive one-tenth. One-third was to go to the University of Oklahoma and the University Preparatory School, of which the University of Oklahoma received nine-tenths and the University Preparatory School received one-tenth.

By the same law the normal schools received one-third of this fund. This is divided equally among them.

The educational institutions receiving these funds must remain under the exclusive control of the state. None of the funds must ever be diverted either temporarily or permanently from the purposes set forth in the Act, and no portion of these funds can be used for the support of religious educational institutions. The capital of this fund cannot be diminished and only the income may be used.

THE BUILDING FUND

Section 8 of the Enabling Act provided that Section 33 and "all lands heretofore selected in lieu thereof, heretofore reserved under said proclamation, and Acts for charitable and penal institutions and public buildings, shall be apportioned and disposed of as the Legislature of the State may prescribe."

The legislature acting under this authority in 1911⁴³ established a public building fund, by providing, that "all moneys heretofore or hereafter received by the sale and rental of Section 33 and lands granted in lieu

⁴³S. L. 1911 Ch. 89.

thereof, the same being lands granted to the State of Oklahoma for charitable and penal institutions and public buildings, shall constitute and be known as the 'Public Building Fund.'" The increments to this fund consist in moneys received from sale and rentals of Section 33 and lands granted in lieu thereof and from the sale of bonds. These bonds and the interest thereon are payable out of the sale or rental of these lands. This fund is further described in the following chapter on "Funded Debt of the State of Oklahoma."

CHAPTER XI.

THE FUNDED DEBT OF THE STATE

The funded debt of the State of Oklahoma will be considered under two headings:

I. Constitutional and Statutory Provisions Governing such Debts.

II. The State Funded Debts.

There are several provisions in the constitution governing both temporary and funded indebtedness.

Article X, Section 23 of the constitution provides that, "The State may, to meet casual deficits or failure in revenues, or for expenses not provided for, contract debts; but such debts, direct and contingent, singly or in the aggregate, shall not, at any time, exceed four hundred thousand dollars, and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained or to repay the debts so contracted, and to no other purpose whatever." In the case of *In Re Application of State to Issue Bonds to Fund State Indebtedness* (33 Okla. 797:127 Pac. 1065) it was held, that the limitations of this section were not intended to apply to that class of pecuniary obligations arising out of the ordinary necessary current expense of maintaining the state government and which were in good faith intended to be paid, and were lawfully payable out of the current yearly revenues and other resources of the state, for the fiscal year within which said obligations were incurred.

"Whenever the expenses of any fiscal year shall exceed the income, the legislature may provide for levying a tax for the ensuing fiscal year, which with other re-

sources, shall be sufficient to pay the deficiency, as well as the estimated ordinary expenses of the State for the ensuing year.”¹ The courts have held that this provision for paying such deficiencies is not exclusive, and that the legislature could, therefore, fund such a debt, instead of levying a tax to pay it.² This was done when the 1913 funding bonds were issued.

Section 24 of Article X provides that, “In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection or to defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.”

The main provision of the constitution regarding funded debts is found in Article X, Section 25, which provides, “Except the debts specified in sections twenty-three and twenty-four of this article, no debts shall be hereafter contracted or on behalf of this State, unless such debts shall be authorized by law for some work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within twenty-five years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for and against it at such election. On the final passage of such bill in either House of the Legislature, the question shall be taken by yeas and nays to be duly entered on the journals thereof, and shall be:

¹Const. Art. 10, Sec. 3.

²33 Okla. 797, 127 Pac. 1065.

'Shall this bill pass, and ought the same to receive the sanction of the people?' "

The payment of state debts is provided for by Article X, Section 4 of the constitution, which provides that, "For the purpose of paying the State debt, if any, the legislature shall provide for levying a tax, annually, sufficient to pay the annual interest and principal of such debt within twenty-five years from the final passage of the law creating the debt."

Acting under the constitutional provision that "The State may, to meet casual deficits or failure in revenues, or for expenses not provided for, contract debts; . . ." the legislature has authorized departments, institutions, etc., to create deficiencies in case of emergencies by getting the written consent of the governor, setting forth the cases justifying such deficiencies, and the facts occasioning the emergency. The total of such deficiencies must not exceed \$200,000 for any one fiscal year.³

THE STATE FUNDED DEBTS.

The State of Oklahoma has three funded debts:

- A. State Funding Bonds of 1908.
- B. The Public Building Bonds of 1910 and 1911.
- C. State Funding Bonds of 1913.

STATE FUNDING BONDS OF 1908

These bonds were issued for the purpose of funding the territorial debt and interest thereon and the debt of \$157,700 and interest contracted during the first year of statehood. Bonds to meet this indebtedness in the amount of \$1,460,000 were issued in ten series designated as series from A to J, each series consisting of \$146,000. No payment of principal was to be made on

³S. L. 1919, Ch. 229.

these bonds until 1918, when the first series became due. The law provided that a sufficient tax levy should be made annually to pay the annual interest on the bonds and to provide for a sinking fund to pay the principal when due.⁴ Despite this provision of the law, no payments were made until 1918, the time when the annual serial payments began. A payment of \$73,000 annually, therefore, would have had to be made during the entire life of the bonds in order to retire them, since the law in respect to sinking funds does not seem to provide for any interest accruals on sinking fund money⁵, nor is there any provision for the investment of sinking fund money. It is the practice of the state treasurer to simply hold sinking fund money on deposit and turn the interest therefrom into the general fund.

The legislature in providing for the payment of the debt, evidently contemplated that twenty annual payments of \$73,000 should be made. As was said above, no sinking fund was laid aside from the years 1909 to 1918. Beginning with 1918, however, the board of equalization began laying aside money for this fund in addition to the payment of the annual serial installment. For the year ending June 30, 1918, the board of equalization laid aside for this fund \$146,000 from the general fund.⁶

For the year ending June 30, 1919, another \$146,000 was set aside from the 1919 surplus in the general fund.⁷ The regular series due have been paid up to and including 1921. Partial payments have been made on all the

⁴R. L. 1910, Secs. 351-361.

⁵Session Laws 1919, Chapter 287, Sec. 3.

⁶Board of Equalization Minutes, Vol 4, Page 357.

⁷Board of Equalization Minutes, Vol. 4, page 557.

other series except one, the sum of these payments being \$42,000; leaving a balance outstanding of \$834,000.^{7a}

CRITICISMS AND RECOMMENDATIONS

Setting aside a sinking fund for the payment of serial bonds was an unusual procedure on the part of the legislature which perhaps they believed to be necessary because of the constitutional provision contained in Article X, Section 4, that for the purpose of paying the state debt, if any, the legislature shall provide for levying annually a tax sufficient to pay the annual interest, and to repay the principal of such debt within twenty-five years of the final passage of the law creating the debt. However, it is evident that the payment of an installment of principal each year on a funded debt is equivalent to the setting aside of a sinking fund, and that such payment actually meets the intent of the constitution. It is equally evident that the method of paying off the installments as they fall due and also laying aside money toward a sinking fund is illogical and wasteful, since it deprives the state of the use of money which might be employed advantageously for any of several different purposes. Realizing this situation, the board of equalization in the fall of 1920 applied the money in this fund to the retirement of \$32,500 of the bonds outstanding against the fund⁸ and used most of the balance of this money in retiring bonds of the 1913 funded debt. No further payments should be made into this sinking fund, as the bonds are being retired annually as they fall due by appropriations from the general fund.

^{7a}Budget 1923-1925, LXXXVII.

⁸R. L. 1910, Sec. 356, provides that these bonds may be bought in and cancelled at any time.

THE PUBLIC BUILDING BONDS OF 1910 AND 1911

When Oklahoma was admitted to the Union in 1907, the national government provided:

“That section thirty-three, and all lands heretofore selected in lieu thereof, heretofore reserved under said proclamation, and Acts for charitable and penal institutions and public buildings, shall be apportioned and disposed of as the Legislature of said State may prescribe.”

Chapter 89 of the Session Laws of 1911 provided that all moneys that had heretofore been received and all that should be received hereafter from the sale or rentals of section 33 and lands granted in lieu thereof, should constitute the public building fund. This statute also provided that not more than \$3,000,000 in bonds for the construction of public buildings should be issued against this fund; that is, as it was necessary to immediately construct public buildings, and as the receipts from the sale of lands and the other increments to this fund were not sufficient to do so, the fund itself was capitalized and bonds were issued against it. The law provided further that the interest and principal of such bonds should be paid out of the sale and rental of these lands.

The legislature provided that these bonds should be issued in 28 series. Series 1 to 10, inclusive, were for \$75,000 each; and series 11 to 28, inclusive, were for \$125,000 each. Bonds were only issued, however, through and including Series 24. In Series No. 6 bonds numbered from 146 to 150 were cancelled. In Series No. 7, bonds numbered from 101 to 150 were cancelled, and in Series No. 8 bonds numbered from 109 to 150

Enabling Act. Sec. 8.

were cancelled, leaving the total outstanding bonds at \$2,451,500.¹⁰ So far eleven of these series have been paid, leaving the following indebtedness:

Series 12 to 24, inclusive, at \$125,000 each, \$1,625,000

The assets of this fund were (June 30, 1920) as follows:¹¹

Notes derived from the sale of lands	\$2,298,937.10
Unsold land	376,254.00
Liberty Bonds	300,000.00
Cash in Treasury	425,902.26
Making the total assets	\$3,400,073.36

The annual income of this fund, exclusive of sales, is about \$170,000.¹²

It will be seen that there is a net surplus in this fund of \$1,575,073.36. This surplus does not give a true picture, however, for this indebtedness is spread out over a period of fourteen years. Since this is true, the annual income of this fund, not counting sales of lands, will practically pay its liabilities, as they fall due, and, with a small appropriation during the next few years, this fund could pay all its liabilities and yet remain absolutely intact. The very conservatively estimated income from the fund and the difference between the liabilities and income are shown in the following table:

Year	Principal Payment	Interest	Total Annual Income	Estimated Annual Income	Difference
1923-4	125,000	75,000	200,000	160,000	Deficit 40,000
1924-5	125,000	68,750	193,750	160,000	Deficit 33,750
1925-6	125,000	62,500	187,500	160,000	Deficit 27,500

¹⁰State Bond Register.

¹¹Report of Commissioner of the Land Office, 1919-1920.

¹²Ibid.

1926-7	125,000	56,250	181,250	160,000	Deficit	21,250
1927-8	125,000	50,000	175,000	160,000	Deficit	15,000
1928-9	125,000	43,750	168,750	160,000	Deficit	8,750
1929-30	125,000	37,500	162,500	160,000	Deficit	2,500
1930-31	125,000	31,250	156,250	160,000	Surplus	3,750
1931-32	125,000	25,000	150,000	160,000	Surplus	10,000
1932-33	125,000	18,750	143,750	160,000	Surplus	16,250
1933-34	125,000	12,500	137,500	160,000	Surplus	22,500
1934-35	125,000	6,250	131,250	160,000	Surplus	28,750

It will thus be seen that by making a very small appropriation to this fund for a few years, the principal could be maintained absolutely intact. The keeping of this building fund intact, as will be shown later on, would make possible the construction of most of the public buildings required by the state from time to time. It would seem expedient, therefore, to recapitalize this fund and issue against it additional building bonds. In view of the urgent demand for public buildings at the present time, it is recommended, therefore, that new public building bonds be issued against this fund.

Perhaps the best way to do this would be to issue new sinking fund bonds for a period of twenty-five years, or bonds due in 1946. The interest upon this debt should be paid from the general fund, while the principal could be paid from the income of the public building fund; since the income of this fund from 1935 (the last year in which a payment must be made upon the present indebtedness) to 1946 would be sufficient to amortize the debt. In other words, the contributions to the sinking fund on these bonds should start in 1936, the year after the present issue of public building bonds will have been paid. The law creating this sinking fund should provide that the interest on the sinking

fund moneys shall be invested and shall be added to the principal.

If the annual income of the public building fund is figured very conservatively as \$160,000, this amount, laid aside as a sinking fund for a ten year period, beginning in 1936 would, at 5 percent, produce \$1,912,462.80. Thus bonds to this amount could be issued. If the income were figured at \$163,000 it would produce a sinking fund of \$2,050,196.48 in ten years. The legislature, therefore, by simply providing for the payment of the annual interest from the general fund could appropriate nearly \$2,000,000 for public buildings, without increasing the general tax levy.

By the above plan several good public buildings could be built immediately with no cost to the state but the interest (approximately \$100,000 a year) and yet the public building fund could remain intact.

STATE FUNDING BONDS OF 1913

Owing to the failure of certain revenues to produce the amounts estimated by the legislature in 1909, the state found itself in a position of having issued by the end of the fiscal year 1911, \$2,907,000 worth of warrants which it was unable to pay. Acting under the provisions of Sections 372 to 381 of the compiled laws of Oklahoma of 1909, the governor, the secretary of state and the state treasurer applied to the district court for permission to fund this indebtedness. At the hearing certain citizens protested against this funding, mainly on the ground that it violated Sections 3, 4, and 23, Article X of the constitution. This case was taken, therefore, to the supreme court which overruled these objections,¹³ by declaring that the limitations

¹³33 Okla. Reports 797; 40 Okla. Reports 145.

in respect to incurring indebtedness in Section 23 did not apply to obligations arising out of the ordinary expense of government, and that the provision for the paying of deficiencies which may arise in any fiscal year, where the ordinary current expense of the state exceeds its income from current taxation and other sources, is not exclusive. Following this decision, therefore, bonds were issued in 1913 to the sum of \$2,907,000. These bonds consist of ten series of \$290,700 each, lettered from A to J. No series is to be paid until 1923 when series A becomes due. From then on until 1932 one series is to be paid each year. These bonds bear 4 1-2 percent interest payable semi-annually on April 1st and October 1st. The recital upon the bonds provides that they may be retired at any time after ten years from the date of issue, and this recital also provides for:

“The collection of an annual tax sufficient to pay the interest on the bonds as it falls due, and also to constitute a sinking fund for the payment of principal at maturity.”

No sinking fund for the payment of principal was laid aside, however, until 1919, when \$161,500 was set aside by the board of equalization.¹⁴ The same amount was set aside for 1920,¹⁵ and other amounts were later employed for this purpose, making a total of \$914,100 so set aside beside the amount appropriated by the legislature to pay the interest.

Since these bonds are serial bonds, the laying aside of a sinking fund after the series were due and payable would seem to be serving no useful purpose. The state board of equalization has paid off \$914,100 on different series of these bonds. Part of this money was paid

¹⁴Board of Equalization Minutes 1919, Page 537.

¹⁵Ibid. page 557.

from the 1908 funding bond sinking fund, and part of it from the 1913 funding bond sinking fund.

In case bond issues are made at any time in the future for any purpose, it seems highly inadvisable to provide for the payment through the use of the combined serial bond and sinking fund method. Either the straight sinking fund method or a serial bond method should be followed. Since, according to present laws, the sinking fund moneys draw no interest, it would probably be well, except in special cases, to issue only serial bonds.

The funded per capita debt of Oklahoma is small¹⁶ compared with that of a good many other states, as are also the annual debt payments. As Oklahoma's wealth is very great,¹⁷ placing her about fourteenth from the top in the list of states, her condition as a whole is exceptionally fortunate.

¹⁶See F. F. Blachly, *Financial System of the State of Oklahoma*. University of Oklahoma Press, Chapter 1, Schedule VII.

¹⁷*Ibid.* Schedule I.

CHAPTER XII.

THE APPROPRIATION AND BUDGET SYSTEM

In a discussion of the appropriation and budget system of this state, three main topics should be considered:

I. The Constitutional and Statutory Provisions Governing Appropriations.

II. The State Budget Law of 1919.

III. A Criticism of the Oklahoma Budget System.

CONSTITUTIONAL AND STATUTORY PROVISIONS GOVERNING APPROPRIATIONS.

In the constitution of the state of Oklahoma are found the following provisions:

No money shall be paid out of any state fund or fund under state management, except through an appropriation.¹

No money shall be paid from an appropriation unless payment is made within two and one-half years after the passage of the appropriation act.² The effect of this restriction is to make all state activities not otherwise provided for by constitutional or statutory provisions dependent on legislative approval for their continuation, since no legislature can pass a standing appropriation, continuing for more than two and one-half years after the passage of the act.

Every law making an appropriation or continuing or reviving an appropriation shall distinctly specify the sum appropriated and the object of the appropriation.³

¹Const, Art. 5, Sec. 55.

²Ibid.

³Ibid.

The general appropriation bill may contain only the appropriations for the expenses of the executive, legislative, and judicial departments and for the interest on the public debt.⁴ This provision requires that there shall be at least two appropriation bills, since the expenses of state institutions, etc., cannot be included in the general appropriation bill.

No provision can be made in the general appropriation bill for the increase in salary of any state officer or employee, or for the payment of salary to the incumbent of any new position, until a law has been passed providing for the increase in salary, or creating the position and fixing the salary therefor.⁵ The effect of this provision is that in case any increase in the salary or personnel of the executive, legislative or judicial departments is contemplated in making up a budget, such increase must either be provided for by a prior law—which in practice would have to be enacted by the preceding legislature—unless passed as a special emergency measure, or else enacted as a separate appropriation bill, which under the limitation next discussed would require a separate bill for each increase.⁶

All appropriations other than those contained in the general appropriation bill must be made by separate bills, each embracing but one subject,⁷ which must be clearly described in its title.⁸ The effect of this limitation, and the limitation regarding the scope of the general appropriation bill, on the procedure prescribed by

⁴Const., Art. V, Sec. 56.

⁵Ibid.

⁶Bryan v. Menefee, 21 Okla. 1, 95 Pac. 471.

⁷Const. Art. V, Sec. 56.

⁸Ibid. Sec. 57.

the state budget law, will be discussed in connection with the provisions of that act.

All appropriation bills must be submitted to the governor, who may disapprove the bill in toto or disapprove any particular item or items, while approving the rest. Such a veto, total or partial, may be overcome by a two-thirds vote of the legislature.⁹

Subject to the special restrictions and limitations imposed by the constitution itself, the legislature has the right to make appropriations at its own discretion, under the provision that "the authority of the Legislature shall extend to all rightful subjects of legislation."¹⁰ The effect of this and the preceding provision upon the development of an efficient executive budget system will be discussed later.

The legislature is specifically forbidden to:

a. Retire any officer on pay or part pay, or make any grant to a retiring officer.¹¹

b. Appropriate the public money for the establishment or maintenance of a bureau of immigration.¹²

c. Increase the number or emolument of its employees except by general law, which shall not take effect during the term at which such increase was made.¹³

d. Provide for the state becoming a stockholder in or making a donation to any company, association, or corporation.¹⁴

e. Appropriate money borrowed by the state for a pur-

⁹Const. Art. VI, Sec. 12.

¹⁰Const. Art. V, Sec. 36.

¹¹Ibid. Sec. 47.

¹²Ibid, Sec. 48.

¹³Ibid. Sec. 49.

¹⁴Const. Art. X, Sec. 15.

pose other than that specified in the act levying the tax.¹⁵

f. Appropriate revenue from state taxes for a purpose other than that specified in the act levying the tax.¹⁶

g. Increase the salary or emoluments of any public official during his term of office, except as otherwise authorized by the constitution.¹⁷

Appropriations may not be overdrawn, thus creating deficiencies, except with the written consent of the governor. The total of such deficiencies for any fiscal year shall not exceed \$200,000. Any deficiencies in excess of this or debts "created contrary to the provisions of the law" are void.¹⁸

The procedure in the case of deficiencies allowed by the governor up to \$200,000 in each fiscal year is as follows: The governor issues a deficiency certificate which is taken up by a bank, and is in the nature of a loan drawing 6 percent interest upon checks actually drawn against it from the time at which each check was drawn to the time of maturity. All expenses under this deficiency are paid by the governor by check on the deficiency certificate account. This system virtually makes it impossible to overdraw an appropriation. The deficiency certificate acts as a loan as far as the state is concerned. As far as the institution is concerned it acts as a supplemental appropriation.

THE STATE BUDGET LAW OF 1919.

At the regular session of the legislature in 1919, a law was passed "to establish a budget system" for the state of Oklahoma.¹⁹ This law follows in nearly every

¹⁵Ibid. Sec. 16.

¹⁶Ibid. Sec. 19.

¹⁷Ibid. Art. XXIII, Sec. 10.

¹⁸S. L. 1919, Ch. 229.

¹⁹S. L. 1919, Ch. 142.

respect the Virginia law of 1918. The essential features of the system so created are as follows:

On the first day of November in even-numbered years, "each of the several State Departments, bureaus, divisions, officers, commissions, institutions, and other agencies and undertakings receiving or asking financial aid from the state of Oklahoma" must submit to the governor an itemized estimate of the amount of money needed by them for each of the two immediately succeeding fiscal years. These estimates are to be made on uniform forms, furnished by the governor, which are to "clearly designate" the kind of information desired.

On or before December first in even-numbered years, the state auditor must submit to the governor estimates of the financial needs of the legislative and judicial departments of the state. These estimates are to be itemized in accordance with the budget classifications adopted by the governor, and are to be accompanied by a "full and detailed explanation" of all increases or decreases. The legislative estimates are to be certified to by the presiding officer of each house, while the judicial estimates are to be prepared by the state auditor, according to the laws governing the expenditures of the judicial branch of the state government. These estimates, and the accompanying explanations, must be included in the budget, without revision by the governor, thus depriving him of control over the legislative and judicial expenditures.

The third step in the budget system is the preparation by the governor of a "complete and itemized plan of all proposed expenditures" of all divisions of the state government for the two ensuing fiscal years, and an estimate of the money which will become available, either from revenues or from loans, to meet these pro-

posed expenditures. The information needed by the governor in making up the budget is secured in three ways. The first source of information is the estimates presented by the various state officials, in connection with which, as has been stated above, the governor may require the submission of such information as he deems necessary. The second source of information available to the governor is a report which the state auditor is required to furnish him on or before the first day of November. This report is to contain the following statements classified and itemized according to the budget classifications adopted by the governor.

“1. A statement showing the balance standing to the credit of the several appropriations for each department, bureau, division, officer, board, commission, institution, or other agency or undertaking of the State at the end of the last preceding appropriation year.

“2. A statement showing the monthly expenditures and revenues from each appropriation account, and the total monthly expenditures and revenues from all the appropriation accounts, including special and all other appropriations, in the twelve months of the last preceding appropriation year.

“3. A statement showing the annual expenditures in each appropriation account, and the revenues from all sources, including expenditures and revenues from special and all other appropriations, for each year of the last two appropriation years, with a separate column, showing the increase and decrease for each item.

“4. An itemized and complete financial balance sheet for the State at the close of the last preceding fiscal year ending June 30th.

“5. Such other statements as the Governor shall request.”

The governor and his assistants, on or before the first day of December in the even-numbered years, must have completed a careful survey of the various state agencies, such as institutions, departments, bureaus, officers, etc., in order to obtain a working knowledge of the needs of the state. To enable the people to have a chance to express their opinion on the budget, the governor is directed to provide for public hearings "on any and all estimates" to be included in the budget, during the month of November, and to require the attendance at these meetings of the heads or responsible representatives of all agencies, undertakings, or departments, of the state government.

Within five days after the beginning of each regular session of the legislature, the governor must submit to the presiding officer of each house printed copies of the budget. This budget consists of the complete and itemized plan of expenditures and estimate of revenues described above. "Opposite each item of the proposed expenditures the budget shall show in separate parallel columns the amount appropriated for the last preceding appropriation year, (and) for the current appropriation year any increase or decrease." Along with the budget the governor is required to furnish to the legislature certain information for its guidance in considering the financial program there outlined. This information, as described in the law, is as follows:—

"1. A statement of the revenues and expenditures for each of the two appropriation years next preceding, classified and itemized in accordance with the official budget classifications adopted by the Governor.

"2. A statement of current assets, liabilities, reserves, and surplus or deficit of the State.

"3. A statement of the debts and funds of the State.

"4. A statement showing the Governor's itemized estimates of the condition of the State Treasury as of the beginning and end of each of the next two appropriation years.

"5. An itemized and complete financial balance sheet for the State at the close of the last preceding fiscal year ending June 30th.

"6. A general survey of the State's financial and natural resources, with a review of the general accounts, industrial and commercial condition of the State."

Such information is essential to the intelligent and adequate consideration of a financial plan for the state by the legislative body. At the same time that the governor submits the budget to the legislature he is required to submit a tentative bill covering all appropriations proposed by the budget, "clearly itemized and properly classified, for each year in the ensuing biennial appropriation period." As already noted, the constitution restricts the scope of the "general appropriation bill" to the expenses of the executive, legislative, and judicial departments of the state government, and to the interest on the public debt; and also requires that all other appropriations must be made by separate bills, each embracing a single subject. These provisions are squarely in conflict with the requirement of the law that the governor shall submit "a tentative bill" for all the proposed appropriations. However, the legislative intention could be fully met, and the provisions of the law substantially complied with, by the submission, in connection with the general financial plan outlined in the budget itself, of a general appropriation bill, and such other appropriation bills as are necessary, considering each bill as a "vote" or part of the general

budget, somewhat after the procedure used in connection with the English budget.

The final step in the budget system is the consideration of the budget by a legislative committee and approval or rejection of the budget plan by the legislature. The law provides for the consideration of the budget by the committees of the senate and the house of representatives having charge of appropriations, sitting in joint session. These sessions are to commence within five days after the submission of the budget to the legislature. The joint committee may require the attendance of state officials, and the submission of information by them, and the governor, his representative, the governor-elect, and all persons interested in the estimates under consideration have the right to be present and be heard at these meetings. The legislature, except in case of emergency, may not consider other appropriation bills until the budget bill has been disposed of, and all such bills subsequently considered shall be classified in accordance with the classifications in the budget. The legislature may increase or decrease, as it sees fit, items in the budget bill.

CRITICISM OF THE OKLAHOMA BUDGET SYSTEM

A study of the budget law of 1919, as outlined above, indicates that it was intended to accomplish two things for the state: A. To secure a complete and unified financial plan for the state and its activities; B. To secure responsibility in financial planning through an "executive" budget. In some respects the act provides an admirable opportunity for accomplishing these purposes. It provides for the making of this financial plan for the state by the chief executive. It sets up sources of information in that it requires estimates from all

expending departments; an adequate report from the state auditor on the finances of the state as well as other statements requested by the governor from him; and a careful survey of all state agencies, made by the governor and his staff. Other valuable information may be secured by the budget staff at the estimate hearings. The legislature is furnished with quite adequate information for its guidance in considering the budget plan through the estimates submitted to it by the governor. Further information may be obtained by the legislature through the hearings before its joint committee considering the budget bill. Finally, this law opens the road to the establishment of a real executive budget system, if the legislature will refuse to consider any state appropriations other than those proposed to it by the governor.

Like all new legislation, however, the budget system of the state, as now constituted, is susceptible of improvement. In fact, there must be a number of changes made before a really effective system can be established. The most important of these changes will be indicated in the succeeding paragraphs.

In the first place, the law and the constitution fail to set up a true executive budget, in which the executive department will be responsible for making plans for the activities of the state, and for devising methods for financing them. The legislature is not bound to consider, and to approve or disapprove the financial plans of the executive alone, but may, after considering the executive budget, consider and pass other appropriations. This makes it possible for the legislature to supplement, modify, or even supplant altogether any financial plan that the executive might prepare for the state. Furthermore, it hampers and discourages the governor in

preparing the budget, since any state department, official or institution which feels that it has not been given all it needs may go over his head and secure additional funds from the legislature. This also tends to deter the governor from assuming responsibility for the request of any department for increased funds, since such increases may be secured directly from the legislature without being included in the budget. To be truly effective the law should forbid the legislature from considering, except by extraordinary vote, any appropriation that has not been submitted through the governor. This, however, would necessitate a constitutional amendment, since, as noted above, the legislature, when not specifically restricted by the constitution, has power over all rightful subjects of legislation, and may also override the governor's veto by a two-thirds vote.

Another stumbling block in the road to a true executive budget is the independence of the state administrative departments. Since they are not responsible to the governor, but for the most part derive their authority from the same source as he—the constitution and the people—they are to a large extent independent of him in financial planning, and even were he given the final word in making financial plans, the carrying out of these plans would still be in the hands of independent officials. The governor must be made in fact as well as in name the chief executive of the state before we can have a true executive budget. This same independence of the executive departments may render it difficult for the governor to secure the information necessary for the preparation of the budget, especially in the integrating and co-ordinating of the accounting systems of the various state institutions and

financial agencies, since the control over these systems is placed in the hands of an independent officer, the state examiner and inspector.²⁰

Another defect of the present system is that under it the outgoing governor prepares the financial plans for the first two and one-half years of his successor's term. The new governor, assuming office on January first, is operating for the first six months of his term under the appropriations made by the preceding legislature, while the budget that is submitted to the incoming legislature, and under which the state government will operate for the next two years, has of course, been prepared by the outgoing governor. Thus each governor is put in the position of operating under the plans of another for over half of his term, and also of making plans for the conduct of the state government for two and one-half years after he goes out of office, a plan which certainly does not make for executive responsibility. The only remedy, apparently, is to so amend the constitution that the new governor will take office six months before the legislature meets. This could be accomplished by providing that the governor shall be elected in April of the year prior to the legislative session and shall take office on July first of the same year. This would give time for the preparation of the budget by the incoming governor and would make it necessary for him to operate under the former governor's budget for only a few months.

Still another stumbling block in the road to a really responsible executive budget is the existing lack of provision for a "showdown" in case of a deadlock between the governor and the legislature over the finan-

²⁰Const., Art. VI, Sec. 19.

cial plans, as presented in the budget. It is true that the legislature has the power in the end to substitute its own plans for those of the governor if it so desires; but if the dispute is of a fundamental nature, these legislative provisions are likely to meet the gubernatorial veto which is ordinarily rather difficult to overcome; and furthermore, if the governor did not exercise his power, or if the appropriations were passed over his veto, we should have the situation of the executive being held responsible for the proper carrying out of plans which he did not make, and which he did not approve. So long, however, as we maintain the theory of an absolute separation of powers between the legislative and executive departments as independent branches of government, we cannot hope to do away with all chance of deadlock between these departments. Some amelioration of this condition, however, could be secured by forbidding the legislature by a constitutional provision to consider appropriations not recommended by the governor, or to increase those appropriations recommended by him, except by an extraordinary vote.

There should be some provision made for a closer coördination between expenditure and revenue planning than is provided by the present system. While at present the executive must inform the joint committee on appropriations of the sources from which it expects to secure the revenue necessary to meet the proposed expenditures, any revenue measure that may be introduced will be considered by a separate committee, independently of the plans for expenditure that are being approved by the budget committee. It might well happen that a new revenue measure might be so framed by such an independent committee as to interfere seriously with the plan for expenditures approved by the

budget committee and adopted by the legislature. The general lack of coördination at present between the planning of revenue and of expenditure has been one of the chief points made in favor of the adoption of an executive budget system by the state and national governments; and, in order to secure such coördination, the Oklahoma system should be so amended as to provide for the submission by the governor, in connection with his plans for expenditures, of copies of tentative bills for any changes in the revenue laws that he may deem essential to that plan, and for the consideration of these bills by the budget committee.

The preparation of the first state budget in 1919 was seriously hampered by the failure of the legislature to provide the funds necessary for the employment of an adequate staff to assist the governor in making the survey of state departments and institutions which is provided for by section 6 of the budget act. This defect is not inherent in the provisions of the act itself, but is entirely due to lack of proper financial support. To carry out the spirit and purpose of the budget law, it is essential that the legislature make adequate financial provision for securing the information that is necessary to the executive in order to make financial plans intelligently. The 1923 legislature (S. L., ch. 48) provided for a budget officer to assist the governor in the preparation of the budget; and this step in the right direction may well be followed by further progress toward a scientific budget.

CHAPTER XIII.

REGULATION OF BUSINESS AND LABOR.

The regulation of business occupies a place of rapidly increasing importance among the problems of government. The complexity of modern commerce, the growth of combinations and "trusts," the increasing inability of the individual to protect his interests against the encroachment of powerful combinations, have led to the enactment of anti-trust legislation on the one hand and inspection and regulatory laws on the other. The depletion of natural resources when given over to unhindered exploitation by private interests requires the adoption and enforcement of a policy of conservation. The changed relations between employer and employee have caused additions to our statutes, and the creation of new administrative authorities. Many of these new commercial and industrial problems have not yet been satisfactorily solved, and will probably furnish an incentive to further governmental experimentation in the future.

State regulation of business may be administered in two ways. The first is by the enactment of regulatory laws, very specifically delimiting the policy to be adopted, and leaving their enforcement to the civil and criminal courts in the ordinary routine of their duties. The second is merely to indicate by law the general policy to be followed, and to vest the detailed enforcement of this policy in the hands of administrative agencies with authority to make such special rules as from time to time may prove necessary to such en-

forcement.¹ Both methods have been employed in Oklahoma. What businesses should be subject to regulation, what this regulation should be and how it should be administered are questions of policy to be determined by the people of the state and their representatives. The scope of this chapter is to describe briefly the extent of business regulation in Oklahoma and the manner in which it is administered, from a governmental viewpoint.

Very strict rules seeking to prevent the abuse of corporate power are established by both the constitution and the statutes. A large part of Article IX of the constitution is devoted to the rights, duties and liabilities of public service corporations, and the establishment of a corporation commission to administer these provisions.² The constitution also contains several provisions applying to private corporations.³ The laws relating to corporations prescribe very carefully the method of organization, conditions upon which domestic companies may be formed or foreign corporations admitted to the state, the extent of corporate powers and the manner in which they may be exercised.⁴ A stringent anti-trust law forbids, under heavy penalties, combinations in restraint of trade, monopolies, discrimination and unfair competition.⁵

Oklahoma's mineral wealth has induced the promotion of many highly speculative mining, oil and refining companies, some of them doubtless formed in good faith

¹For an excellent discussion of the advantages of administrative regulation over purely legal regulation see J. T. Young, *New American Government and Its Work*, pp. 168-171.

²See Chap. VI.

³Const. Art. IX, Secs. 38-47.

⁴See. Rev. Laws 1910, Chap. 15.

⁵See Rev. Laws 1910, Chap. 79.

but with poor judgment, others with no motive in view but to extract dollars from the pockets of unwary investors. To protect the public from these "blue sky" schemes, the seventh legislature enacted a law regulating the sale of certain classes of securities.⁶ Briefly stated, its provisions are as follows. The law defines "securities" as including stock certificates, bonds, debentures, certificates of participation, membership contracts or bonds for the sale and conveyance of land on deferred payments. "Speculative securities" are: 1. Securities for the purchase of which extraordinary gain is offered as an inducement. 2. Securities for the sale of which a commission of more than ten per cent is offered or paid. 3. Securities in the par value of which the hazard of speculative profit is predominant. 4. Securities the value of which materially depends on future developments. 5. Securities of a corporation which includes in its assets as a material part thereof patents, formulas, good will, promotion or intangible assets. 6. Securities issued to promote the sale of undeveloped land outside of Oklahoma. A state issues commission is created, consisting of the state bank commissioner, the secretary of state and the state auditor. Any individual, partnership or corporation wishing to sell or offer for sale speculative securities within the state of Oklahoma must, before doing so, secure a permit from the state issues commission. As a prerequisite to the issuance of this permit, there must be filed with the commission a copy of the articles of incorporation of the company issuing the securities, a copy of the form of the securities, full details concerning them, information concerning the assets, liabilities, prospects, pro-

⁶S. L. 1919 Chap. 49.

posed *modus operandi* and business plan, stockholders, directors, etc. of the corporation whose securities are to be sold, and a full account of the procedure by which it is proposed to sell them, a list of selling agents, etc. A bond equal to ten per cent of the value of the securities must be filed with the commission, conditioned on non-compliance with the provisions of the act, to which persons injured by such non-compliance may resort for compensation. A commission of not more than 15 per cent may be paid for the sale of any securities. The issues commission is to make a full and detailed examination into the business which issues the securities before granting a permit for their sale, such examination to be at the expense of the promoters. A subsequent examination may be made by the commission on its own motion at any time. Criminal penalties, both corporate and individual, are prescribed for a violation of the provisions of the act.

That the law has accomplished its purpose is very clear. The newspapers no longer are filled with lurid predictions of infallible profits. The glib-tongued stock salesmen who infested the land have vanished. However, there are some changes that might well be made in the law. For instance, certain provisions, such as the requirement of extremely detailed reports, the unrestricted right of examination at the discretion of the commission, the limitation of the compensation paid to agents, and the tying up of capital in the bond, impose a burden which tends to keep out legitimate companies as well as illegitimate. If these provisions can be modified in such a way as not to impose so heavy a burden upon honest speculative concerns, without letting down the bars to the whole host of "wildcat" corporations, this should be done. Moreover, there is no

good reason for creating a special administrative department to care for this activity, especially if that department is to be placed in the charge of an ex officio board whose members have their time fully occupied by the duties of their regular positions. It would seem that this duty might well be entrusted to a bureau in some other department, preferably that of banking, or in case of a reorganization of the state government, in a consolidated department of finance.

Banking and allied businesses, because of their great importance to the community and the difficulty of self-protection on the part of those dealing with them, are especial objects of state regulation. The Oklahoma constitution directs the legislature to establish a "Banking Department," under a commissioner to be appointed by the governor, with power to regulate all state banks, loan, trust and guaranty companies, "under laws which shall provide for the protection of depositors and individual stockholders."⁷ Pursuant to this direction, the first legislature enacted a complete banking law, which with various modifications continues in force today. By the law, the right to engage in the business of banking is restricted to corporations organized under its provisions.⁸ National banks are expressly excepted from this requirement, since the state has no right to forbid them from doing business.⁹ Requirements as to capital stock, number of stockholders, contents of articles of incorporation, etc., are prescribed by the law.¹⁰ Incorporation is effected by filing articles of incorporation, properly executed, with the secretary of state,

⁷Const. Art. XIV. Sec. 1.

⁸R. L. 1910, Sec. 272. Bunn Supp. Sec. 272. S. L. 1915, Ch. 58 Sec. 2.

⁹McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579.

¹⁰R. L. 1910, Ch. 6 Art. 1.

but before any banking business may be transacted, a certificate of authority must be obtained from the state bank commissioner, issued on showing that the organization has been according to law and that the capital stock has been fully paid in. The issuance of the certificate is, however, purely discretionary.¹¹

After organization, banks are subject to the control and supervision of the state banking department, and to the legal regulations governing the conduct of their business. The banking department functions through a state bank commissioner and a state banking board. The commissioner must have had five years experience in banking, but after his appointment must not be connected in any way with any bank. He is appointed by the governor with the advice and consent of the senate for a term of four years, and receives a salary of \$4,000.00 per year. The state banking board consists of the bank commissioner and three members, appointed by the governor from a list of nine submitted by the executive committee of the state bankers' association.¹² Both the commissioner and the board may be removed by the governor for cause, and the aforesaid executive committee has power to recommend their removal.¹³ The banking board and the commissioner together are charged with the enforcement of the state banking law.

Every state bank must be examined by a representative of the banking department twice each year and may be examined oftener, if necessary.¹⁴ Annual and

¹¹R. L. 1910, Sec. 258, Bunn Supp. Sec. 307d S. L. 1913, Ch. 22, Sec. 8.

¹²Bunn. Supp. Sec. 298, 307a S. L. 1913, Ch. 22, Sec. 1, Sec. 3, S. L. 1915, Ch. 58, Sec. 3.

¹³Bunn. Supp. Sec. 307b S. L. 1913, Ch. 22, Sec. 5.

¹⁴Bunn. Supp. Sec. 307f S. L. 1913, Ch. 22, Sec. 10.

quarterly reports of the bank's financial condition must be rendered, and special reports may be required at any time.¹⁵ With these inspections and reports as a basis, the bank commissioner may exert considerable authority over the banks. He may require a bank to increase its capital stock or to cease receiving deposits in case its deposits are over ten times as large as its capital and surplus.¹⁶ He may require the removal of dishonest, reckless or incompetent officials.¹⁷ He may require the capital to be replaced in case it becomes impaired.¹⁸ He may revoke the charters of banks for disobeying the state banking law,¹⁹ and is to take charge of the assets and wind up the affairs of such banks, as well as of those which become insolvent.²⁰

Recognizing the inability of individual depositors to protect themselves adequately against the risks of bank failure, Oklahoma was the first state to adopt the policy of guaranteed bank deposits.²¹ Briefly, the system is as follows: A compulsory annual assessment, amounting to one-fifteenth of one percent of the average daily deposits is levied on all state banks.²² This assessment is administered by the state as a trust fund for the depositors in insolvent state banks. When a bank fails, the department takes charge of the assets and winds up the business, paying depositors out of the current assets. If, as is usual, these prove insufficient to pay

¹⁵R. L. 1910, Secs. 273, 274, 290.

¹⁶R. L. 1910, Sec. 259.

¹⁷R. L. 1910, Sec. 288.

¹⁸R. L. 1910, Sec. 263.

¹⁹R. L. 1910, Secs. 264, 267.

²⁰R. L. 1910, Secs. 264, 279, 291, 302, 304 Bunn. Supp. Sec. 307s; S. L. 1915, Ch. 58, Sec. 5.

²¹T. B. Robb. The Guaranty of Bank Deposits. Chap. 3

²²R. L. 1910, Sec. 299.

the depositors in full, the deficit is made up from the guaranty fund, which is reimbursed as far as possible by realization upon the "long time" assets, and by enforcement of the double liability of stockholders. In case the guaranty fund is so depleted by bank failures as not to be able to meet claims of the depositors, there is no recourse or liability against the general revenue of the state, but means are provided by the sale of interest-bearing certificates, payable out of future receipts of the fund.²³

It will be seen that this is not a true state guarantee of bank deposits, but rather a system of compulsory depositors' insurance, administered by the state. This insurance cannot stand the strain of excessive losses any more than the other form of insurance. As has been pointed out by Dr. Robb,²⁴ such a system, when successful, furnishes a safeguard against the chances of loss through bank failures which no individual depositor can provide for himself. But it requires for successful operation stringent banking laws and strict inspection and law enforcement, in order to reduce failures to the minimum. If these requirements are met the guarantee system and the state banking system will perform adequate service to the public; if they are not met, both will fail.^{24a}

The state banking department is also given jurisdiction, similar to that exercised over banks, over the affairs of trust companies and building and loan associa-

²³Bunn Supp. Sec. 299 S. L. 1911, Ch. 31, Sec. 3. S. L. 1913 Ch. 22, Sec. 6.

²⁴Robb, op. cit. Chap. 8 and 9.

^{24a}Since this was written, the act establishing the depositors' guaranty fund has been repealed (S. L. 1923, Ch. 137), but obligations and liabilities incurred under its provisions are still binding.

tions. For a detailed description of this regulation the reader is referred to the laws of the state.²⁵ Extended comment here is deemed unnecessary.

PAGE 301

Insurance, like banking, has long been one of the principal objects of state regulation. The peculiar function of insurance renders necessary, in the interest of safety, a supervision which individual policy holders cannot supply. In Oklahoma, an insurance department is established by the constitution, and charged with the execution of all laws relating to insurance and insurance companies.²⁶ The office of commissioner of insurance is created. The incumbent is elected by popular vote for a term of four years and must be twenty-five years of age and "well versed in insurance matters."²⁷ He is required to give bond and is to have such further qualifications and perform such further duties as may be prescribed by law. So far, the legislature, while by no means backward in prescribing duties for the commissioners, has not created any new qualifications.

There are a number of conditions attached by the law to the privilege of engaging in the business of insurance. All insurance companies must secure a permit to do business, issued only after examination into their affairs.²⁸ Foreign insurance companies must pay special taxes, agree to pay all taxes imposed by the legislature, to designate the insurance commissioner as attorney on whom process may be served, and to comply

²⁵Runn Supp. Chap. 15, Art. 8a. R. L. 1910, Chap. 6, Art. 3, S. L. 1913, Ch. 200; S. L. 1919, Chap. 168.

²⁶Const. Art. VI, Sec. 22.

²⁷Const. Art. VI. Sec. 23-24.

²⁸R. L. 1910, Sec. 3412.

with numerous other constitutional and statutory requirements.²⁹

A standard form of fire insurance policy is required.³⁰ Shorter forms may be used, but only with the consent of the insurance commissioner.³¹ For other types of insurance the law prescribes certain things which the policies must contain and requires all policy forms to be approved by the commissioner or by the insurance board.³² Insurance agents must be licensed by the department.³³ Companies may combine only with the approval of the insurance commission.³⁴ To insure compliance with the statutory requirements as to the conduct of their business, provision is made for examination and inspection of all insurance companies by the commissioner, and for the assessment of penalties in case of violation of the law.³⁵

Fire, tornado, plate glass insurance companies, surety companies, and rating bureaus are singled out for special regulation and put under the control of the state insurance board, composed of the insurance commissioner, the state fire marshal, and a secretary appointed by the governor, with the advice and consent of the senate.³⁶ This commission licenses the agents, approves

²⁹Const. Art. XIX; R. L. 1910, Sec. 3422-3456 incl. R. L. 1910, Chap. 38.

³⁰R. L. 1910, Sec. 3481.

³¹R. L. 1910, Sec. 3483.

³²R. L. 1910, Sec. 3473; Bunn Supp. 3478n S. L. 1915, Ch. 174, Sec. 14.

³³R. L. 1910, Sec. 3429. Bunn Supp. Sec. 3478 i-j, S. L. 1915 Ch. 174, Secs. 9, 10.

³⁴Bunn Supp. Chap. 38, Art. VI F. S. L. 1915 Ch. 70.

³⁵R. L. 1910, Sec. 3413-3416, 3484-3489.

³⁶S. L. 1915, Ch. 174, Sec. 1; Bunn Supp. Sec. 3478a.

the policy forms, and regulates the rates of such companies.³⁷

The constitution requires special provision to be made for the regulation of fraternal insurance associations and mutual farm or trades insurance associations.³⁸ Accordingly, the law defines fraternal insurance associations,³⁹ and imposes certain regulations upon their operation, different from those placed on other insurance organizations. They must secure an annual license, make reports, are subject to examination and must base their reports upon a standard mortality table which is incorporated in the statutes.⁴⁰ The regulation of these organizations is vested in the fraternal insurance board which consists of the insurance commissioner and four members appointed by the governor subject to senatorial confirmation. They hold office for four years, and must be members of fraternal insurance societies doing business within the state. They may be removed by the governor at his pleasure.⁴¹ Mutual insurance companies have no special regulatory body, but are under the general control of the insurance commissioner. The legislature has by law provided for the organization of several classes of such companies.

The importance of labor and industrial relations in modern political problems is exemplified by the laws dealing with these subjects. The constitution creates a department of labor in charge of a commissioner chosen by the people for a term of four years. The duties of the commissioner are left to be prescribed by law.⁴² The stat-

³⁷Bunn Supp. Sec. 3478b-3478y S. L. 1915, Ch. 174, Secs. 2-22.

³⁸Const. Art. XIX, Sec. 2.

³⁹R. L. 1910, Sec. 3486.

⁴⁰R. L. 1910, Sec. 3487-3499.

⁴¹S. L. 1919, Chap. 67.

⁴²Const. Art. VI. Sec. 20.

utes⁴³ divide the work of the department among four bureaus: Statistics, arbitration and conciliation, free employment and factory inspection. The functions of the bureau of statistics need no detailed comment. The bureau of arbitration and conciliation was established in accordance with a constitutional direction.⁴⁴ [It is in charge of a board, consisting of the commissioner of labor as *ex officio* chairman, and six members appointed by the governor and confirmed by the senate. Of these members, two farmers and one employer are named by the governor on his own initiative, while one employer and two employees are named by him on the recommendation of the commissioner of labor. The representatives of employers and employees upon the board must have been connected with the mining, manufacturing, transportation or mechanical industries of the state for three years preceding their appointment. The term of the appointive members coincides with that of the governor who appoints them. The jurisdiction of the board extends to strikes involving twenty-five or more persons. In case such a strike is threatened, or occurs, in any locality, it is the duty of the mayor of the town or of the justice of the peace of the municipal township, and of the chief executive of the labor organization involved, to notify the board of the fact. It is then the duty of the board to attempt to induce the parties to submit the dispute to it for arbitration. In case of a refusal, if the strike is likely to cause public injury or inconvenience, the board may on its own motion investigate, and make and publish its findings as to what would be a fair and equitable settlement of the dispute. This machinery has not proved very effective as an aid to industrial peace. In the major industrial disputes which have occurred

⁴³R. L. 1910, Sec. 3703.

⁴⁴Const. Art. VI. Sec. 21.

the board has been politely ignored. It has not the proper equipment in the shape of a technical staff and facilities for gaining information sufficient to fit it for adjusting problems of industrial relationships, and it has no power to enforce its decrees. So far the search for an efficient, just and satisfactory method of dealing with industrial disputes seems to have met with little success in any state, and presents one of the problems which must be solved in the future.

The bureau of free employment maintains a central office at Oklahoma City and branches at Enid, Muskogee and Tulsa.⁴⁵ It has proved of considerable value to both workmen and employers in bringing the man and the job together.

Many state laws have been passed for the protection of labor.⁴⁶ Among these are acts regulating the employment and working conditions of women and children, establishing the eight hour day for public works, requiring the places where workers are employed to be kept in a safe and sanitary condition, and requiring the furnishing of certain conveniences, etc. The enforcement of these laws is for the most part vested in factory inspectors employed by the department of labor. The inspection of mines and the enforcement of the state laws applying to them is vested in a chief mine inspector and three assistants, all elected by the people.⁴⁷

In 1915, the legislature enacted a workmen's compensation law,⁴⁸ which was amended and re-enacted in

⁴⁵S. L. 1919, Chap. 211.

⁴⁶R. L. 1910, Chap. 42, Articles III, V.

⁴⁷Const. Art. VI, Sections 25, 26, R. L. 1910, Section 3986 ff.

⁴⁸S. L. 1915, Chap. 246.

1919 and also in 1923.⁴⁹ The law applies to "hazardous employments" which are very fully defined by it. The right of action for personal injuries sustained by an employee in these industries is, with certain exceptions, abolished, and instead a definite scale of compensation for injuries, to which an injured employee is entitled as a matter of right, is established. An injury inflicted wilfully, either by the injured employee, or by some other person, or by a wilful failure to use a safety device provided by the employer, or resulting from intoxication, is excepted from the operation of the act. The enforcement of the law and the settlement of claims arising out of it is vested in a state industrial commission of three members, appointed by the governor with the advice and consent of the senate. The term of commissioners is six years, one retiring every two years. Employers must secure the payment of compensation to injured employees, either by carrying insurance in an approved company, or, by permission of the commission, carrying their own risk.⁵⁰

This concludes the survey of the chief classes of business regulation at present existing in Oklahoma and not elsewhere considered in this book. The survey has necessarily been superficial, as a thorough treatment of the subject would require a volume in itself. The wisdom of any general policy of regulation presents a political, social and economic problem which must be referred to the people and their leaders for solution. As regards the governmental phase of regulation, namely, its administration, it seems that the chief improvement that is needed is concentration of responsibility.

⁴⁹S. L. 1919, Chap. 14; as amended by S. L. 1923, Ch. 61.

⁵⁰For a discussion of the theory underlying workmen's compensation laws see J. T. Young, *The New American Government and Its Work*, pp. 377-381.

Authority and responsibility are scattered among so many different agencies at present that it is practically impossible to hold any one responsible for the way in which state regulation is carried out. The final chapter deals with a proposed reorganization of state administration, and the reader is referred to it for suggestions as to how these functions may be organized in order to combine efficiency and responsibility with democracy.

CHAPTER XIV.

PUBLIC HEALTH ADMINISTRATION

In Article V, Section 39, of the Oklahoma constitution, the following sentence is found: "The Legislature shall create a Board of Health, Board of Dentistry, Board of Pharmacy, and Pure Food Commission, and prescribe the duties of each."

Acting upon this authority, the legislature has established a state board of health in charge of a state commissioner of health, who is appointed by the governor for a term of four years, coinciding with the governor's own term of office. The commissioner receives a salary of \$3,600 per annum, together with an allowance for records, printing and traveling expenses.¹ His powers include the administration of oaths when necessary in the discharge of his duty,² and the "power to make and enforce any and all needful rules and regulations for the prevention and cure, and to prevent the spread of, any contagious, infectious or malarial disease among persons; to establish quarantine and isolate any persons affected with contagious and infectious diseases; to remove or cause to be removed any dead, decaying or putrid body, or any decayed, putrid or other substance that may endanger the health of person or domestic animal; to condemn or cause to be destroyed any impure or diseased article of food that may be offered for sale; to superintend the several boards of health in the counties, cities, villages, towns, and town-

¹R. L. 1910, Sec. 6786.

²Ibid. 6789, as amended by Ch. 274, H. B. 471, S. L. 1919.

³R. L. 1910, Sec. 6786.

ships; to establish rules and regulations for the keeping and reporting of all vital statistics, births, deaths, marriages and divorces as provided by this article.”⁴ Another section of the public health laws⁵ gives the state commissioner power to go in person or send a physician or health officer to any place where the presence of contagious disease makes such a move advisable, and to “take such legal steps as he may deem necessary to protect the public health of the state or of such locality.”

The duties of the state board of health are laid down as follows:⁶ “It shall be the duty of the State Board of Health, under the provisions of this article, to quarantine against outside territory known to be infected with contagious or infectious diseases; to take charge of districts or localities in the state infected with any contagious disease, and enforce such rules and prescribe such measures as it may deem necessary to prevent the spread of the same or to suppress it; to take proceedings to have abated a nuisance calculated to affect injuriously the health of the public or any community; to take cognizance of the interest of health and life among the citizens of the state, make sanitary investigations and inquiries relative to the cause of disease, and especially of epidemics, the source of mortality, and the effects of localities, employments, conditions and circumstances upon the public health; to investigate the sanitary conditions of schools, prisons, public institutions, mines, railroads and street cars and all buildings and places of public resort, and to recommend,

⁴Ibid. 6787.

⁵Ibid. 6803.

⁶Ibid. 6788.

prescribe and enforce such measures of sanitation for them as may be deemed advisable; to advise the state and all local governments in all hygienic matters; to act in conjunction with city, town and township boards of health; and to make a report in writing to the Governor twenty days preceding each regular and special session of the Legislature upon the sanitary condition, prospect and needs of the state, setting forth the action of the Board, all its expenditures since the last preceding report, and such other matters as it may deem proper for the promotion of health or the prevention of disease, which said report shall be laid before the Legislature by the Governor at its ensuing term."

Duties of various kinds have been added by law from time to time. A law of 1917⁷ provided for the registration of vital statistics. These statistics are collected by local registrars in each registration district, upon forms and certificates prescribed by law; and are compiled by the state registrar. Each city, incorporated town and township constitutes a primary registration district, two or more of which may be combined at the discretion of the state health commissioner.⁸ Though the title of the law speaks of registering births, deaths and marriages, only births and deaths are included in its text. A bureau of vital statistics in the state health department handles this work.

In 1923 the legislature accepted the provisions of the United States Act of 1921, "for the promotion of the welfare and hygiene of maternity and infancy" commonly called the Sheppard-Towner Bill; and directed the state board of health "to coöperate through its Division of Child Hygiene (now known as the Bureau of Maternity and In-

⁷S. L. 1917, Ch. 168.

⁸Bunn Supp. 1918, 6985, y, x, z, 1, z 2.

fancy) in the administration of the Act of Congress aforesaid." (Senate Bill No. 83). It also appropriated \$21,-370.52 for the work of the Bureau, for each of the next two years (1924, 1925). Contributions from the federal government will make the total funds available \$45,050 a year.

A law of 1919⁹ provides for the treatment of venereal diseases and requires the examination for such diseases of all persons confined, after conviction, in penal institutions. In the case of city prisoners, if the examination reveals the presence of such diseases they are treated by the city. After the expiration of the prison sentence, the person being treated must be kept at the prison or at some other suitable place for treatment until pronounced cured by a physician and discharged by the health authorities of the state. In case such person is unable to pay for the treatment, it is paid for by the division of government in whose prison the afflicted person was confined. Municipal health officers as well as those of the state and county are "directed and empowered when in their judgment it is necessary to protect public health, to make examinations of persons convicted of sex offenses and to detain such persons until the results of such examination are known." This work is done directly by the local government units; but the state board of health is the final authority with whom rests the power to retain or discharge persons who have been held for treatment.

For two years a bureau of venereal diseases, coöperating with the state board of health, and supported jointly by the state of Oklahoma and the federal government, did valuable work in treating venereal diseases through clinics

⁹S. L. 1919, Ch. 17.

held at several cities, and in educating the public in regard to them. The grant made by Congress has not been renewed, and the eighth legislature made no provision for the continuance of the work; except an appropriation of \$15,000 for prevention and treatment, not more than \$3,000 of which is to be spent in any one county. The ninth legislature appropriated \$20,000 as a contingent fund to be expended under the direction of the state health commissioner for the prevention and cure of venereal diseases.

The examination of public water supplies is under the control of the state board of health. Whenever complaints are made to this board by any city executive, by any county health officer or by a local board of health, in regard to the sanitary quality of the water supplied to the public for domestic and drinking purposes, it is the duty of this board to investigate the character of the water supply. The board may also, upon its own initiative, make investigations. In either of these cases, the board of health is authorized to make an order requiring change in either the source of supply, manner of storage, the method of purification and treatment, or all of these, if necessary. Here an appeal lies to the district court.¹⁰

Further control over water supplies is given by the act of 1917,¹¹ which requires that every municipal corporation, etc., supplying or authorized to supply water to the public within the state, shall file with the state board of health a certified copy of its plans and surveys, with a description of the source from which the supply is derived. No additional source may be used thereafter without a written permit from the state

¹⁰S. L. Okla. 1917, Ch. 166.

¹¹Ibid.

board of health.¹² No "person, company, corporation, institution or municipality" may supply water or let a contract for the construction of waterworks used in supplying water for domestic purposes to the public, without a written permit from the state board of health. All applications must be accompanied by certified copies of maps, plans and specifications as well as "a description of the design of the system source," the manner of storage, the degree of purification of the stream proposed for the supply, and other data that may be required by the board of health. No changes may be made in the system without a permit from the state board of health.¹³ Appeals lie from the decisions of the board of health to the district court of the county in which the system is located. The court has the right to set aside, or modify, the order of the board of health, or fix the terms upon which the permit will be granted.¹⁴

Section 4 of this act forbids the construction of sewer systems, or sewage disposal or treatment plants, by a municipality or by others, without a written permit from the state board of health. Plans, maps, and specifications must be furnished, together with a "complete description of the designs of the system, sewer outfall and disposal or treatment plant."

Whenever complaints are made to the state board of health by city officials or other health officials, regarding the pollution or polluted condition of waters within the state, the board is required to make an investigation. When the board determines that such pollution exists, it has the authority to require the pollution to be done away with within a reasonable time. In case the munici-

¹²Ibid. Sec. 2

¹³Ibid. Sec. 3

¹⁴S. L. 1917, Ch. 166.

pality considers that the requirement is illegal, unjust or unreasonable, it may appeal for relief to the district court of the county in which the pollution occurs.¹⁵

The state board of health, under certain conditions, may permit the discharge of sewage into the waters of the state. Those systems already discharging sewage into the waters may continue to do so until in the opinion of the state board of health the time shall have come when the practice is dangerous to the public health.¹⁶

The state board of health exercises its control over water supplies and sewerage systems through a bureau of sanitary engineering.

Despite the constitutional requirement that the legislature shall establish a pure food commission,¹⁷ no separate organization outside of the state board of health has been set up. The bureau of pure food, drug and sanitary inspection in the board of health "looks after the inspection of hotels, cafes, drug stores, grocery stores, meat markets, soda fountains, and all places where food and drink is stored * * Samples of suspicious looking food are collected and sent to the laboratory for analysis * * much filthy, decomposed or putrid food * * is condemned and destroyed."¹⁸ The 1923 legislature divided the state into four districts for the purpose of such inspection, and provided for one supervisor and two inspectors in each district.

The state laboratory, for the analysis of foods, drugs, and medicines under the supervision of the state commissioner of health, examines and analyzes "such articles of food, drugs and medicines as are sent to the said

¹⁵*Ibid.*

¹⁶S. L. 1917, Ch. 166.

¹⁷Const. Art. V, Sec. 39

¹⁸Fifth Annual Report of the State Dept. of Health, Okla. p. 13

laboratory for the purpose of determining whether such articles are adulterated, mislabeled or misbranded, within the meaning of the Pure Food and Drugs Law.”¹⁹ If it appears that any specimen is adulterated, mislabeled or misbranded, the state commissioner of health notifies the county attorney of the county in which the sample was taken.²⁰ Violation of the pure food and drugs act is a misdemeanor, punishable by fine and imprisonment.²¹

One of the strangest things about the health laws of Oklahoma is the fact that they do not prescribe the personnel of the state board of health; and, strictly speaking, there seems to be no such board. In 1917 the state commissioner of health responded to an inquiry, “I am the state board of health,”²² and this statement is still true. In fact, the publications prepared under the supervision of the commissioner are labeled as coming from the state health department; although a board, rather than a department, is established by law. Yet regulations are issued as coming from the state board of health.

The 1923 legislature (S. L., ch. 168) organized the state health department into several bureaus, including a bureau of public health educational work, a bureau of diagnostic laboratory, a bureau of sanitary engineering, a bureau of pure food, drugs and sanitary inspection, a bureau of vital statistics, a bureau of control of epidemics, a bureau of distribution of biologics, a bureau of venereal diseases, and a bureau of maternity and infancy. Some of these bureaus are merely nominal, while others are completely organized.

¹⁹Bunn Supp. 1918, 6948

²⁰Ibid.

²¹Ibid, Sec. 6957j.

²²Child Welfare in Oklahoma; pub. by Nat'l Child Labor Committee, 1917

Most of the bureaus have already been in operation under slightly different names. Some quotations from the latest available report²³ of the state department of health will indicate the nature of their work.

"The work of this Bureau (Diagnostic Laboratories) falls into three main divisions.

"1. Examination of specimens of communicable and infectious diseases and other bacteriological tests.

"2. The analysis of samples of food and drugs collected by county officials and the Inspectors of the Health Department.

"3. The analysis, both bacteriological and chemical, of samples of water and sewage collected by the State Sanitary Engineer, County Superintendents of Health, and others from public water supplies suspected of being polluted.

"All work done by the laboratory is entirely free, there being no charge for the examination and analysis of samples of various kinds sent in from all over the state. This free service makes bacteriological tests possible for the poor as well as for the rich. * * *

"City physicians and officials are earnestly requested to submit samples of their water to the laboratory for analysis. This service alone has doubtless saved thousands of cases of sickness and prevented many deaths, to say nothing of the financial economy it has been to the state.

"The number of animal heads examined for rabies yearly would more than justify the entire amount expended by the state for the maintenance of the laboratory * * Upon arrival the head is examined and a wire report of the findings sent at once, thus enabling the party bitten to secure Pasteur treatment. These treat-

²³Fifth Annual Report, Okla. State Dept. of Health, pp. 11, 14.

ments are furnished free to those who are unable to pay.

“To give the reader some idea of the magnitude of preventive service performed by the State Laboratory, will state that during the last fiscal year there were 13,780 tests and analyses made, which included tests for Malaria, Typhoid, Diphtheria, Rabies, Water, Wasserman blood tests, Gonorrheal smears, etc. * * *

BUREAU OF EPIDEMICS.

“The duties of the Bureau of Control of Epidemics and Distribution of Biologics lie chiefly in the field of prevention. Since the organization of this bureau 125,000 people have been vaccinated against typhoid fever, about fifty thousand of these being immunized at the expense of the state. 1,618,000 units of diphtheria antitoxin have been distributed free. On an average there are about fifteen anti-rabic treatments distributed each month; 2,000 treatments of influenza serum have been sent out at the expense of the state, and about 2,500 smallpox vaccine. It is readily discernible what a part this bureau plays in the prevention * * * of disease.

BUREAU OF PUBLIC HEALTH EDUCATION

“The chief duty of the Bureau of Public Health Education is to disseminate health propaganda. That it is impossible for a nation or individual to achieve really great things without good health is recognized by all progressive people. Statistics show that there are 630,000 preventable deaths in the United States each year; that the average value of these lives is \$1,700 or a total approximately \$1,000,000,000.00. By preventable deaths is meant those which would be avoided if the knowledge now existing among well informed medical men were

actually applied in a reasonable way and to a reasonable extent. Therefore it is readily seen what a wide range of possibilities this bureau has for good service to suffering humanity."

STATE TUBERCULOSIS SANITORIA

In 1919 the Legislature provided for the establishment of three district tuberculosis sanatoria, which are located at Clinton, Talihina and Boley, respectively. The first two are for white persons and can accommodate one hundred patients each. The sanitorium at Boley is for negroes, and accommodates fifty.

The work of these institutions consists not only in treating patients, but also in the dissemination of knowledge as to the cause, control and cure of tuberculosis.

"While these Sanitoria 'shall be open to the treatment of all residents and citizens of the state afflicted with tuberculosis', yet the policy pursued will be to give preference to curable cases, for the reason that there are a great many more persons within the state suffering from tuberculosis than can be accommodated and cared for in these three institutions.'"²⁴

Patients who are able to pay for their board, care and treatment at these sanatoria are expected to do so: "all other patients shall be admitted upon request of the County Health Physician, Public Health Nurse of the Sanitorium or the State Board of Health; and the County Commissioners of the county from which such patient is admitted, or sent, shall pay to such district sanitorium the sum of not less than ten dollars (\$10.) nor exceeding fifteen dollars (\$15.) per week for board

²⁴Bulletin "Information about Tuberculosis Sanatorium." issued by State Health Dept. no date

care and treatment of such patient.”²⁵ In order to pay this sum, and to provide for the transportation of indigent patients, the excise board of each county is entitled to levy not more than one mill for a “Tuberculosis Fund,” in addition to the legal maximum levy for current expenses.²⁶

The sanatoria are placed under the joint supervision of the state board of affairs, which supervises their “fiscal and business affairs,” and of the state board of health, which supervises the admission, treatment and discharge of inmates.²⁷

By this law, a bureau of tuberculosis is established in the state department of health, in charge of a chief physician, an expert in prevention and treatment of tuberculosis, experienced in sanatorium construction and management. He is to be appointed by the state commissioner of health, with the approval of the governor.²⁸ No duties whatever are laid upon the bureau or the chief physician, nor is any appropriation made for his salary or expenses of the bureau, so that this provision of the law is a dead letter. The state commissioner of health endeavored to secure the passage by the following (eighth) legislature of a bill creating a tuberculosis commission with supervision over the state’s tuberculosis sanatoria; but the bill was rejected.²⁹

PUBLIC HEALTH WORK IN THE COUNTY

The state commissioner of health appoints in each county a county superintendent of public health, whose term of office is two years, unless he is removed sooner by the state commissioner. The appointments are made

²⁶ Ibid. Sec. 10

²⁷ Ibid. Sec. 6

²⁸ Ibid. Sec. 7.

²⁹ Fifth Annual Report of State Dept. of Health, p. 28

²⁵ S. L. Okla. 1919, H. B. 380, Sec. 9.

in such a way that two terms of office cover and coincide with the four-year term of the governor. The county superintendent of public health must be "a regular practicing physician of good standing and of good moral character and a resident of the county for which he is appointed." His salary, which is to be paid quarterly by the county commissioners, out of the salary fund of the county, is the magnificent sum of "five dollars per day for the time actually and necessarily served." The maximum salary which he may receive in a year ranges from \$200 in counties of not more than 10,000 inhabitants, to in counties of more than 50,000 inhabitants. In addition, he may receive compensation for "the actual and necessary expenses contracted in the discharge of the duties of the Superintendent of Public Health when attempting to control and prevent the spread of any epidemic."³⁰ A remarkable provision of the law requires "that appointments of county superintendents of health shall be made from all the recognized schools of medicine, as near as may be according to the relative per cent of practitioners of the various schools in the state."³¹

The powers and duties of the county superintendent of public health include the abolishing of nuisances, the isolation of persons affected with "dangerous and contagious diseases," and the right "to do other things, with the approval of the State Board of Health, as may be deemed necessary for the preservation of the public health within said county."³² In case of an epidemic, the county superintendent of health and the board of county commissioners "may make such provisions, rules and

³⁰Bunn. Supp. 1918, 6799.

³¹Ibid, 6791.

³²Ibid, 6791.

regulations as may be necessary under such conditions, to prevent the spread of such dangerous epidemic, and shall have full power to compel submission to any rules and regulations that they may deem for the best interests of their community to stamp out or prevent the spread of such epidemic.”³³ Further duties of the county superintendent of public health include the enforcement of the “rules and regulations of the State Board of Health in the prevention of the spread of all infectious, contagious or epidemic diseases in his county.” He is required “to investigate and examine into the cause thereof, and to recommend rules and regulations to remedy same, and to do such other things in carrying out the purpose and object of its creation, as the State Board of Health may lawfully require of him.”³⁴

All practicing physicians in the county are required to report to the county superintendent of public health any cases of infectious and contagious diseases discovered by them. Failure to make such a report is a misdemeanor punishable by a fine of from ten to twenty-five dollars. The physician is required to establish a temporary quarantine, “and the penalty herein provided for the violation of a township or town quarantine shall be enforced against the violation of a quarantine order made by such a physician.”³⁵

The law quoted makes no special provision for the counties in which township government has been abol-

³³Ibid. 6799

³⁴Bunn Supp. 1918, 6802

³⁵Ibid. 6795. “Upon receiving the said report, it shall be the duty of the county superintendent, if such contagious and infectious disease exists in a township or town, to issue an order of quarantine to the board of health, as herein created, in such township or town, in such form as may be stipulated by the rules and

ished; but since another law³⁶ provides that the duties of the township board of directors shall in such cases be taken over and performed by the board of county commissioners, undoubtedly this board would act to establish necessary quarantines in these townships. In townships which retain local government under a board of directors, this board acts as a township board of health. "The said board of directors, when acting as township board of health, shall be under the supervision of the county superintendent of public health, and shall be governed by such rules and regulations as may be prescribed by the State Board of Health in relation to the public health; and they shall have the power, and it is hereby made their duty, to enforce such rules and regulations pertaining to quarantine of contagious and infectious diseases under the direction of the county superintendent of public health."³⁷

The town board of trustees of every incorporated

regulations of the State Board of Health, requiring such township or town board of health to serve a true copy of said order of quarantine upon such person or persons having such contagious or infectious disease in the same manner as criminal processes are served; and thereupon such person having such contagious or infectious disease shall be, by said township or town board of health, isolated and confined, and all other persons exposed to said infectious or contagious disease shall at the discretion of said township or town board of health be also isolated and confined; and any person having such disease or exposed to such infectious or contagious disease who shall leave the place where he has been isolated by any township or town board of health, or by any officer or other person acting under any order of the said township or town board of health, without the consent of the said board of health, shall be deemed guilty of misdemeanor and shall be fined not less than twenty-five dollars, and not to exceed one hundred dollars. Any person isolated or confined by order of a township board of health shall not be released or relieved of such isolation or quarantine without order from the county superintendent of public health made to the township or town board of health."

³⁶Bunn's Supp., 1918, Sec. 8206, p. t.

³⁷R. L. 1910, Sec. 6792.

town in Oklahoma constitute a board of health, which "shall perform all the duties herein required of the township board of directors, and shall be under the same supervision of the State Board of Health and the county superintendent of public health."³⁸

THE CITY AND PUBLIC HEALTH.

In the cities of Oklahoma the mayor and common council (except in charter cities, which may establish special public health boards) constitute a board of health, with the power and duty of appointing a reputable physician as city superintendent of public health, enforcing rules and regulations in regard to public health, and of establishing quarantine "under the supervision of the city superintendent of public health, as prescribed by the rules and regulations of the State Board of Health relating to all contagious and infectious diseases."³⁹

Every practicing physician in a city must report to the city superintendent of public health all cases of contagious and infectious disease discovered by him or coming to his knowledge. Failure to do so constitutes a misdemeanor.⁴⁰ The city superintendent of public health issues an order of quarantine to the mayor, and the mayor and common council, acting as a board of health, serve a true copy of this order upon the diseased person in the same manner as criminal processes are served. At the discretion of the board of health, all persons who have been exposed to such disease may be quarantined. "Breaking quarantine" is a misdemeanor, punishable by a fine of from twenty-five dollars to one hundred dollars. The physician who discovers any case

³⁸Ibid. Sec. 6793

³⁹Ibid. Sec. 6794

⁴⁰Ibid. Sec. 6796

of contagious disease has the power and duty of establishing a temporary quarantine, which is sanctioned by the same penalties provided for the quarantine issued by the board of health.

WHO MAY SERVE ORDERS OF HEALTH OFFICERS OR BOARDS.

“Orders made and issued by the county superintendent of public health, or the township or town board of health, may be served by the sheriff of the county, or any of his deputies, or by the constable of such township or any of their deputies, or by any person a resident of said county, authorized so to do by the president, or, in his absence, any member of the township board of directors. Orders made and issued by the county superintendent of public health or the town board of health may be served by the sheriff of the county or by any of his deputies, or by the town marshal, or any peace officer of the town or any person authorized so to do by the president of the board of directors, or, in his absence, any member of the said board of directors of said town.”⁴¹

Any person who has been aggrieved by any act, rule, or regulation of any board of health may bring suit in the district court of the county where some member of the said board resides.

Dentistry, pharmacy, embalming, nursing, osteopathy, chiropractic, and the practice of medicine are regulated by special laws; and each of these professions or occupations has a board of examiners to pass upon the fitness of candidates who desire to practice it. It is impossible within the limits of this chapter to discuss the laws governing the practice of these professions.

The law lays upon the county commissioners of each

⁴¹R. L. Okla. 1910, Sec. 6798

county, and the mayors of cities and towns, the duty of seeing that jails and "hold-overs" are thoroughly disinfected and cleaned at certain intervals during the year. The state commissioner of charities and corrections is given the right to direct that these buildings shall be put into sanitary condition at other times if this seems necessary. Prisoners suffering from contagious disease are to be isolated. Similar provisions are laid down for the sanitation of poorhouses. Officials who fail in performing the duties laid upon them by this article of the law are guilty of a misdemeanor punishable by a fine of from ten dollars to five hundred dollars; in addition to which they may be removed from office.⁴²

SUMMARY AND CONCLUSIONS.

In this brief survey of the public health work of Oklahoma, we have seen that the laws are incomplete or confused in several instances. The first criticism that must be made, in fact, is that the laws regarding public health in this state are very inadequate.

This inadequacy has been demonstrated in two glaring instances; namely, the establishment of a state board of health with no personnel; and the establishment of a bureau of tuberculosis, with no funds to maintain it. Other faults of the law have been summarized as follows:⁴³

"There is no law or regulation requiring vaccination against smallpox. Neither is there any law or regulation to compel the treatment of the eyes of infants at childbirth to prevent blindness. There is no provision for the medical examination of public school children nor for

⁴²R. L. 1910, Ch. 67, Art. XI.

⁴³Child Welfare in Oklahoma, p. 250.

a certificate of good health for teaching in the public schools.”

The failure of the laws to make vaccination compulsory to every child who attends the public schools is undoubtedly a potent reason why Oklahoma has many cases of smallpox every year. Since the preceding paragraph was written, the legislature has been prevailed upon to pass a law⁴⁴ requiring the eyes of newborn infants to be treated with nitrate of silver solution; but this law is robbed of its force by the following clauses:

“Should a physician or the parents of said child prefer to use a form of prophylaxis other than the one prescribed by the above (one per cent solution of nitrate of silver) he may do so provided he states in writing his reasons for doing so to the local health officer of the county, city or town, magisterial district or whatever political division there may be within which the infant or mother of any infant may reside, within three days from the date of administering same. Should a physician or the parents of said child deem it best for the interests of his patient, not to use any prophylactic, he shall not be required to do so provided he states fully in writing . . . his reasons for not doing so.

Sec. 8. Nothing in this act shall be construed to compel persons or parents to conform to same, who have religious beliefs contrary to the use of medicine.”⁴⁵

Despite the numerous shortcomings of the public health laws, they would be capable of accomplishing far more than they now do if they were properly enforced; but it is known and acknowledged openly that such is not the case.

One important reason why the health laws are not

⁴⁴S. L. 1921. Ch. 4.

⁴⁵Ibid.

better enforced is certainly the type of organization provided for their enforcement. There should unquestionably be a state board of health composed of well-paid experts; and a much larger staff to carry out the policies of the board than is provided at present. Requirements laid upon the members of this staff should be high, and salaries should be high in proportion.

In regard to the work of the ex-officio boards of health of local units, the following criticism has been made:

“Their primary interest . . . is not health and except in cases of flagrant abuses they do not exercise their power (Because of the per diem basis and the low total salary of the county superintendents of health) in some cases the position is political, the superintendent receiving the maximum salary and on the whole doing a minimum of work. As a rule, inspection is made only on complaint, cases of contagious diseases are not properly isolated, complete records of vital statistics are not kept, and practically no constructive or educational activity is carried on. The health officers frankly state that their salary is not sufficient to permit them to develop the work, and that their private practice comes first. Not only do they give little of their time, but they are loath to take any measures, even when required by law, that might antagonize their clients or fellow physicians. . . . The work is not considered of much importance in the community, and for the most part, both the county and city superintendents are mediocre physicians, with little knowledge of medical science and none of modern public health methods. . . . The health officers in (certain) cities are doing work

as effective as possible with the staff and money at their disposal.

“Such a health organization would be ineffective in any community. It is doubly so in a rural state like Oklahoma where even the most elementary of health measures are seldom observed.

“Even the rural schools, which might be expected to set the health standard for the community, contribute to the unsanitary conditions.”⁴⁶

Oklahoma is disgraced annually by widespread epidemics of contagious diseases, most of which would never occur if the public health laws were enforced. We have seen that there are elaborate legal provisions as to quarantining contagious diseases, but as a matter of fact effective quarantine, except in a very few communities, is so rare as to be unheard of. Sometimes parents do not call a physician to treat mumps, measles, chicken pox, etc. Sometimes when a physician is called he is disposed to make light of the disease, to discount the danger of contagion, and to overlook the quarantine regulations. Even if he feels that he ought to report the disease and see that quarantine is established, he is frequently deterred from doing so by hostility on the part of the patient's family. Given the choice between retaining a profitable connection, and breaking it in order to become a martyr for conscience's sake, it is the exceptional physician who insists upon quarantining for the less virulent diseases, particularly since he knows that few of his professional brethren will follow his example. Even the more serious diseases, such as smallpox and scarlet fever, are seldom rigidly quarantined.

⁴⁶Child Welfare in Okla. pp. 11-13.

Very little attempt is made to exclude sick children from the public schools, though the regulations of the state health department require their exclusion. Sore throats, fever and other general symptoms are absolutely unnoticed, as a rule, and children are sometimes allowed to remain in school even though a rash on their skin indicates the probable presence of contagious disease. The schools are seldom closed because of epidemics, as teachers, parents, school boards and physicians too frequently agree that the children must have the contagious diseases at some time, and the earlier the better.

It is evident that conditions will not be improved much until the attitude of the public is changed by a widespread campaign of education along the various lines of public health work. When the citizens of the state realize that illness costs time, money, happiness, and life, that blindness and deafness and many other dreadful handicaps sometimes follow the "harmless children's diseases," and that measureless suffering could easily be prevented, and the health and welfare of the community could be greatly augmented, by a proper regard for health; then, and only then, they will demand adequate public health laws, adequately enforced.

CHAPTER XV

AGRICULTURE

Oklahoma is a predominantly agricultural state. In the 1920 federal census reports, its rural population is given as 65.1 per cent of its total population. Its topographical and climatic features are such that a wide diversity of crops can be raised. For these reasons a good deal of attention has been devoted to laws and state agencies designed to benefit the farmer, and to encourage progressive agricultural methods. The present chapter will be devoted to a brief survey of the state's activities in this direction.

The board of agriculture, which is created by the constitution,¹ acts as the chief administrative and supervisory body for agricultural purposes. It is composed of five members, all of whom must be farmers with "at least five years' practical experience after reaching the age of twenty-one years." The president of the board is elected for four years at the time when the other state officers are elected. He is the chief executive officer of the board, and in the absence of the board, performs all duties imposed upon it by law, subject to its approval.² The other members of the board are appointed by the governor, by and with the consent of the senate. Members were appointed originally for one, two, three and five year terms. The term of all members appointed later is five years.³

¹Art. VI, Sec. 31, as amended in 1914

²R. L. 1910, Sec. 13

³S. L. 1915, Ch. 109

The constitution⁴ provides that the board of agriculture "shall be maintained as a part of the State government and shall have jurisdiction over all matters affecting animal industry and animal quarantine regulations, and shall be the Board of Regents of all State Agricultural and Mechanical Colleges, and shall discharge such other duties and receive such compensation as now is, or may hereafter be, provided by law."

The general powers conferred on the board of agriculture by statute are as follows:

"The board of agriculture shall be the board of regents of all agricultural and mechanical colleges; it shall select the professors, presidents, and other employees of each of said schools, fix their salaries and prescribe their respective duties. It shall prescribe the course of study in each of said schools, and shall ordain and establish such rules and regulations for the management thereof, not inconsistent with the laws of the State, as they may deem necessary and proper. It shall have jurisdiction over all matters affecting animal industry and animal quarantine regulations, and of all matters affecting agriculture, horticulture and arboriculture. Its duties shall include the collection and publication and distribution of statistical information concerning all matters under its control and supervision. It shall have supervision of the county farmers' institute system, and shall prescribe such reasonable rules and regulations for the management of county institutes, not inconsistent with the laws of the State, as they may deem proper. Said board shall, furthermore, have power to adopt and devise such rules and regulations as may be necessary to secure the efficient administration and proper enforcement of all laws which have for their ob-

⁴Art. VI, Sec. 31, as amended in 1914.

ject the preservation, protection, encouragement or improvement of any branch of agriculture. It shall have power to appoint sub-committees from its membership to perform any duty imposed by law upon said board. It shall have the power to employ all clerical help necessary to conduct the business of the board, and fix their compensation within the limitations provided by law. It may require such bond in any case as it deems necessary to protect 'the State.'"⁵

Specific powers have been granted to this board from time to time. These will now be discussed, together with the duties of other agencies established for related purposes.

PREVENTION OF DISEASES AMONG ANIMALS

In order to prevent the spread of disease among animals, the state board of agriculture has power and authority to establish at any time quarantine lines in the state and to make rules and regulations to maintain and enforce them.⁶ Counties are required to coöperate with the state in this work and are allowed to levy a tax to cooperate with the state board of agriculture in "the eradication of ticks * * * the carriers of Texas or splenic fever."⁷ In order to treat animals infected with ticks, townships and counties under certain conditions may provide dipping vats at a cost not exceeding \$200.⁸ For the purpose of carrying out the quarantine regulations of the state, a state superintendent of livestock inspection, who coöperates with the federal bureau of animal industry, and a corps of livestock inspectors, are ap-

⁵R. L. 1910, Sec. 12

⁶S. L. 1913, Ch. 228

⁷S. L. 1913, Ch. 80

⁸S. L. 1910, Ch. 115

pointed by the board of agriculture.⁹ Railway companies are required by law to disinfect the cars and pens used by them in transporting live stock through the state.¹⁰ It is also made unlawful for any cattle to be introduced into Oklahoma from any territory quarantined by the Secretary of the United States Department of Agriculture for certain specified diseases, without being dipped.

The board of agriculture enforces quarantine regulations as may be necessary to prevent the introduction of tubercular dairy cattle or breeding cattle. It is made their duty to investigate every suspected case, and to see that any cattle found to be tubercular are destroyed or segregated. When such animals are slaughtered under the provisions of law the board is authorized to pay the owner not to exceed one-half of the difference between the appraised value and the value of the salvage of the carcasses, with the proviso that the state shall not pay over \$150 on any registered animal, or over \$50 on any grade animal. In case the stock contracted the disease outside the state, or the owner violated the quarantine regulations of either the state or the national government, the state is not liable.¹¹

A state veterinary surgeon is appointed by the board of agriculture.¹² A law of 1915¹³ provides that whenever live stock within the state are found by the state veterinary surgeon to be affected with rinderpest, foot and mouth disease, glanders, *maladie du coit*, or contagious pleuro-pneumonia, tuberculosis or anthrax, he summons three disinterested house holders, and they appraise the

⁹S. L. 1919, Ch. 44

¹⁰R. L. 1910, Sec. 41

¹¹R. L. 1921, Ch. 38

¹²S. L. 1915, p. 119, amending R. L. 1910, Sec. 17

¹³S. L. 1915, Ch. 233

stock. The veterinarian then kills the animals and so disposes of their carcasses as will best protect the health of domestic animals in that locality. The report of the veterinarian is sent to the superintendent of live stock inspection, who presents the account to the state board of agriculture, which audits the account and allows it if it is found to be correct. The sum paid by the state, however, in such cases, must not exceed one-half the value of such animal so killed and destroyed.

Another law passed in the same year seems to be amendatory to the above law in respect to killing animals for foot and mouth disease. This law provides that the appraisement shall be the full value of the stock killed, and the state shall be liable for fifty per cent of the appraised value, provided the federal government will pay fifty per cent.¹⁴

The state livestock inspectors or their local deputies are charged with the duty of inspecting all animals which are about to be slaughtered for food. If such animals show signs of certain diseases, the inspectors forbid their owners to kill them for this purpose. The inspectors must keep records describing each animal slaughtered; and must give to the person slaughtering such animal a certificate showing that it was "found to be fit for human food."¹⁵

PREVENTION OF DISEASES IN PLANTS AND CROPS

The state law makes it unlawful to sell, offer for sale or give away any nursery stock, fruit trees, bushes, vines or fruits, grains, seeds or vegetables, if they are infected with injurious insects or with dangerous and contagious diseases.¹⁶ To prevent the introduction and dissemina-

¹⁴S. L. 1915, Ch. 26

¹⁵R. L. 1910, Sec. 85.

¹⁶R. L. 1910, Sec. 85

tion of injurious insect pests or diseases, the board of agriculture is authorized to enforce such quarantine rules and regulations as are necessary. The president of the state board of agriculture issues proclamations setting forth these rules and regulations.¹⁷ All nurseries in the state are subject to inspection once each year by the state entomologist, acting under the direction of the board of agriculture. In case the nursery stock is infested with pests or infected with contagious plant disease, sale is forbidden until the stock has been sprayed, fumigated or dipped, as the case may be. In some instances the stock is destroyed. The board of agriculture requires any one shipping or disposing of nursery stock to attach to each shipment or delivery a certificate of inspection.¹⁸ Permits to sell nursery stock are issued by the board of agriculture. As a condition precedent to the issue of the permit, the board requires a report of the inspection of the nursery stock.¹⁹ All nursery stock which is shipped into Oklahoma from other states must not only be accompanied by a duplicate of the permit, but shall also be subject to reinspection, and if upon reinspection the stock is found to be diseased or infested with pests, the board of agriculture may prohibit its sale until properly treated.²⁰ Agents are required to carry a letter or certificate from their principals, setting forth the fact of authorization to do business and other relevant matters.²¹ A law of 1915 adds various similar provisions to this law for the protection of nursery stock.²²

¹⁷Ibid. Sec. 86-87.

¹⁸Ibid. Sec. 88

¹⁹Ibid. Sec. 92

²⁰Ibid. Sec. 93

²¹Ibid. Sec. 94

²²S. L. 1915, Ch. 279

REGULATING THE SALE OF AGRICULTURAL SEEDS

A law of 1919 provides for the proper labeling of seeds, prescribes standards of purity of seeds, defines noxious weeds, and provides for the enforcement of the law in respect to seeds through inspecting, sampling and testing. Administration of this act is in the hands of the state board of agriculture. Provision is made for the punishment of violators of the act.

THE COLLECTION AND DISTRIBUTION OF AGRICULTURAL
STATISTICS

It is the duty of the state board of agriculture to gather, compile and disseminate statistical information relating to "land areas, crop acreages, and such other subjects as may be under its supervision."²³ County assessors are required to collect this information in such form as is prescribed by the state board of agriculture.

INSPECTION OF FERTILIZERS

Oklahoma guards the purity of fertilizers by providing that the certificate of the manufacturer shall be attached to every package of commercial fertilizer sold in the state. This certificate must contain a statement of net weight, the name of the brand or trade-mark under which the article is sold, the name of the manufacturer and the place of manufacture, and a chemical analysis showing certain component parts of the fertilizer.²⁴ Before any commercial fertilizer is sold or offered for sale, the manufacturer, importer, or duly authorized agent who intends to sell it within the limits of the state, must file with the secretary of the board of

²³S. L. 1919, Ch. 82

²⁴R. L. 1910, Sec. 76

agriculture a certified copy of this certificate.²⁵ The manufacturer or importer of any commercial fertilizer or the agent of such manufacturer or importer shall pay annually a license fee of twenty dollars on each brand for the privilege of selling or offering it for sale within the limits of the state.²⁶ The chemical department of the Oklahoma Agricultural Experiment Station makes an analysis at least once a year of all fertilizers offered for sale.²⁷

INSPECTION OF STOCK FOODS

All "concentrated commercial feeding stuffs" are inspected and required to be tagged before being sold. Every lot or parcel of such stock food sold or offered for sale must contain a tag giving nine or ten points of information regarding its weight, contents, manufacturer, etc. Before any such feeding stuff can be offered for sale the manufacturer, importer or seller must file with the board of agriculture a certified copy of this statement, and deposit a sample of the stock food, accompanied by an affidavit that it is a fair average sample. The importer, manufacturer or seller must pay an inspection tax of ten cents per ton. Annual inspection of commercial stock foods must be made by the board of agriculture.²⁸

REGISTRATION OF BREEDING ANIMALS

In order to protect the purity of live stock in the state, an Oklahoma board of live stock registry is established. This board, which consists of instructors in

²⁵Ibid. Sec. 77

²⁶Ibid. Sec. 78

²⁷Ibid. Sec. 79

²⁸S. L. 1911, Ch. 113

the state agricultural college, issues licenses of four different kinds, depending upon the purity of breeding, to those who wish to "stand, travel, advertise or offer for public service in any manner, any stallion or jack in the State of Oklaoma." The board makes investigations to determine whether such animals are properly registered. They have the power to revoke a license when they find that false representations have been made.²⁹

REGULATING THE PRACTICE OF VETERINARY MEDICINE

A state board of veterinary medical examiners, consisting of five members, appointed by the governor, examines those desiring to practice veterinary medicine. Each member of this board must be a graduate of a veterinary college which stands approved by the United States Bureau of Animal Industry, or the veterinary department of a state university. Candidates who satisfactorily pass the examination, which is held once each year in June, are registered by the board and given a certificate entitling them to practice. In case any person holding such certificate is convicted in a court of competent jurisdiction of "dishonorable or unprofessional conduct as defined by law," his license may be revoked by the board. The practice of veterinary medicine without a license is prohibited and is made a misdemeanor.³⁰

Special laws require the quarantine of swine showing signs of hog cholera; regulate the sale of serum and virus for this disease;³¹ and make other like provisions for the safety of domestic animals and the general pub-

²⁹R. L. Okla. 1915, Ch. 53

³⁰S. L. 1913, Ch. 28

³¹S. L. 1916, Ch. 31, S. L. 1917, Ch. 172.

lic. A state inspector of apiaries, in the department of entomology at the Agricultural and Mechanical College, is given the power to examine all apiaries, to give instructions for the treatment of diseased bees, and to destroy such bees under certain conditions.”

A department of dairying under the state board of agriculture, with a state dairy commissioner appointed by this board as its head, inspects dairies, creameries, and all places or vehicles where milk is handled, sold or transported. The dairy commissioner prescribes “such reasonable rules and regulations * * * as he deems necessary to fully carry out the provisions of law * * * relative to the dairy products.”³² “He may examine under oath, or otherwise, any person whom he may believe has knowledge concerning the operations of any creamery, public dairy, butter or cheese factory; may issue subpoenas requiring the appearance of witnesses and the production of books and papers, and may administer oath with like effect as is done in courts of law in this State, and any witness so summoned and examined shall receive the same fees therefor as is now provided for like services in justice courts. And it shall be the duty of any district, superior or county court or judge thereof, upon the application of said Commissioner, to issue an attachment for such witnesses, and compel him or them to attend before the Commissioner and give testimony upon such matters as he, or they, shall be lawfully required by such Commissioner, and said court or judge shall have power to punish for contempt as in other cases of refusal to obey the orders and processes of the court.

³²S. L. 1915, Ch. 76.

³³S. L. 1919, Ch. 247.

"Section 5. Any person or persons, firm or corporation who shall hinder or obstruct or in any way interfere with the State Dairy Commissioner or his deputies while discharging the duties of inspection or who shall refuse or fail to make the reports provided for by Section 4, or who shall refuse or neglect to conform to the rules and regulations of the State Dairy Commissioner * * * shall be guilty of a misdemeanor and shall be fined a sum of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars. (\$300.00)."³⁴

MISCELLANEOUS PROVISIONS

The law defines a number of weights and measures, requires that all packages or containers filled with certain products shall be marked with the name and weight of contents; and charges the board of agriculture with the enforcement of these provisions.³⁵

Many minor functions are given to this board, and to the other boards and commissions described in this chapter; but these functions cannot be detailed here for lack of space.

HELPING THE FARMER MARKET HIS PRODUCTS

By a law of 1919³⁶ there was created a state farm and industrial council, consisting of delegates elected from the farm and industrial council of each county in the state, and from duly organized state-wide agricultural, educational and industrial associations. The purposes of this council are: "Organizing county and community councils, federating organizations established for mutual help, promoting agricultural and industrial en-

³⁴S. L. 1919, Ch. 247.

³⁵R. L. 1910, Ch. 81.

³⁶S. L. 1919, Ch. 91.

terprises, good roads, community building, co-operation in marketing, and the carrying on of projects of state and national interests." This council meets at the Agricultural and Mechanical College at Stillwater. The officers of the state organization consist of a president, vice president, secretary treasurer and a board of directors composed of one representative from each allied statewide interest. In addition there is an advisory board composed of the governor, the president of the board of agriculture, and the director of the agricultural extension work of the state. The advisory board designate the organizations which shall have representation in the state council. They also provide for the organization of the county and community councils, and have supervisory powers over the state organization.

A state market commission was established in 1917 by the legislature.³⁷ The membership of this commission was changed by the laws of 1919³⁸ so that it now includes the governor, the president of the state board of agriculture, and the director of the extension division of the Agricultural and Mechanical College. This commission appoints a secretary who has had experience in the grading and marketing of fruit and vegetable products, and such other employees as it deems necessary. The powers and duties of this commission are:

"First—to organize through the Extension Division of the Oklahoma Agricultural & Mechanical College, co-operating with the United States Department of Agriculture, community and county market associations.

"Second—To standardize farm products, including poultry and dairy products, under adequate rules and (sic) sale of commodities exchanged within the State

³⁷S. L. 1917, Ch. 26

³⁸S. L. 1919, Ch. 280

of Oklahoma, or produced in the State of Oklahoma and sold outside the State of Oklahoma.

“Third—To provide for agents of the Oklahoma State Market Commission in large cities and populous centers that are markets for Oklahoma products, who will direct the selling of all shipments from various communities and county associations, according to rules of the Oklahoma State Market Commission, such officers to be appointed, where in the judgment of the Oklahoma State Market Commission the interests of the shippers will be benefited thereby.³⁹

A charge, fixed by the commission, is made for all products marketed by it.

Any community in any county in this state may organize a local market association under the rules and regulations formulated by the state commission, by making application to the county agent of the agricultural extension division. The state formulates rules for the government of county and community market associations and for membership in such associations. The laws provide that no person can ship products through the commission or through local market associations who has not complied with the laws relative to spraying, grading, packing, and marketing. The state commission prepares rules for cleaning, grading, sacking, packing and otherwise preparing farm products for storage or market.⁴⁰

By another law of 1917,^{40a} coöperative agricultural or horticultural associations were provided for. These associations, instituted for the purpose of mutual help, having no capital stock and not being conducted for

³⁹S. L. 1917, Ch. 26

⁴⁰Ibid.

^{40a}S. L. 1917, Ch. 22.

profit, may be formed by not less than five persons engaged in agriculture or horticulture. Such an association may, as an agent for its members or any of them, perform services connected with the "production, preservation, drying, canning, storing, handling, utilization, marketing, or sale of agricultural products produced by them," and may also perform services for them in connection with the purchase or hire of supplies, "including live stock, machinery and equipment, and the hiring of labor." The persons uniting to form an association accept the articles of association prescribed by law. These articles of association are transmitted to the secretary of state, who issues a certificate which together with a copy of the articles of association, is sent to the county clerk, who thereupon issues a certificate to the association.

Such an association has, among other powers, the power to make contracts, to purchase, lease, or receive and to hold personal and real property, to borrow money necessary for the conduct of its operations, to issue notes and bonds therefor, to give security, to sue and be sued. It elects a board of directors, with power to appoint a president, vice president, secretary, treasurer, and such other officers as may be necessary. It may cooperate, through membership or otherwise, with any association not conducted for profit, whether formed under this particular act or otherwise, provided that such coöperation does not "relate to or involve fixing wages, limiting production, destroying products, or fixing the selling price, or delegate the control of the products of the members of either association." Each member is responsible, as his original liability, for his per capita share of all contracts, debts and engagements of the association existing at the time he becomes a mem-

ber and created during his membership; and in case any other member's share of such obligation is not collectible, each remaining member becomes responsible.

FARM LOANS

A very interesting phase of Oklahoma's official encouragement of agriculture is the help given by the state to those who desire to purchase farms. This help takes the form of loans payable over a long period of time. As another chapter describes fully the funds available for farm loans, they will not be discussed here.

AGRICULTURAL EDUCATION

Besides the excellent Agricultural and Mechanical College and the other agricultural schools and experiment stations established by the state under the control of the board of agriculture, many other forces in Oklahoma are engaged in direct or indirect educational work along the same lines. The state co-operates with the United States Department of Agriculture in conducting farmers' demonstration work in home economics by authorizing the county commissioners in each county to contribute \$1,200 per year for this purpose,⁴¹ and also to appropriate the amount that they deem necessary for farm demonstration work.⁴²

A state commission of agricultural and industrial education supervises the teaching of the elementary principles of agriculture in all public schools.⁴³

In conclusion, it may be said that the state's object is clearly to help the farmer to own his farm, to co-operate with him in meeting his problems, to train him

⁴¹S. L. 1917, Ch. 116

⁴²R. L. 1910, Secs. 7666-7678.

⁴³R. L. 1910, Secs. 7666-7678

to make the most of his opportunities, to facilitate the finding of a market for his products and to give every citizen of the state a sufficient knowledge of the problems and methods of agriculture to insure general understanding and appreciation of this basic industry.

CHAPTER XVI.

HIGHWAY ADMINISTRATION

State activities in regard to highways are confined in Oklahoma to the supervision of the work carried on by local government units, and to the furnishing of a limited amount of financial aid to such units. The actual task of road construction and maintenance is delegated by the state to the counties and townships, and is described in the chapter dealing with local government.

Specific mention of highways as an object of state concern is made in Article XVI of the constitution, section 1 of which provides that "The Legislature is directed to establish a Department of Highways, and shall have power to create improvement districts and provide for building and maintaining public roads, and may provide for the utilization of convict and punitive labor thereon." Pursuant to this constitutional direction the department of highways was established by an act of the Fifth Legislature, in 1915.¹ The chief officer of this department is the commissioner of highways, who is appointed by the governor, with the advice and consent of the senate, to serve at the pleasure of the governor. The law further specifies that he must be a practical road builder and of recognized executive ability, whatever these phrases may mean.² The commissioner of highways appoints the state engineer,³ and other employees of the department. The

¹Bunn Supp. (1915) Ch. 73, Art. I-A; S. L. 1915, Ch. 173

²Bunn Supp. Sec. 7634b; S. L. 1915, Ch. 173, Art. 1, Sec. 2.

³Bunn Supp. Sec. 7634d; S. L. 1915, Ch. 173, Art. 1, Sec. 4

commissioner receives a salary of \$3,000 per annum; the salary of the state engineer is the same.⁴

The functions and duties of the state highway department may be classified as follows:

(1) Furnishing information and advice to local road authorities in regard to the construction and maintenance of the local roads under their control.

(2) Furnishing advice, information and engineering service to the state departments, etc.

(3) Supervision of the local road authorities in their administration of the state road system.

(4) Collection and distribution of the automobile license tax.

(5) Supervision of federal aid highway work within the state.

By the law, the commissioner is directed to prepare standard plans and specifications for the construction of roads and bridges, and to furnish them upon request to any road official in the state. Upon the request of the local officials, the commissioner is to inspect and report upon road projects. It is the duty of the commissioner to compile statistics and information relative to highway construction and maintenance, and to establish standards for such work in the different counties; and he may "at all reasonable times" be consulted by county or township officers having authority over highways and bridges, relative to any question involving matters within their domain.⁵ The highway department also holds examination and issues certificates of competency to applicants for the position of county engineer.^{5a}

⁴S. L. 1919, Chap. 211.

⁵Bunn Supp. Sec. 7634c; S. L. 1915, Ch. 173, Art. 1, Sec. 3

^{5a}Bunn Supp. Sec. 7634g; S. L. 1921, Chap. 74; S. L. 1915, Ch. 173, Art. II. Sec. 1.

The highway department acts as the engineering branch of the state government. It is required to furnish engineering service in "drainage, sanitation and other public improvements" when required by any department of the state. Any municipality of the state may request the department to pass upon "prospects and plans" for its water supply. The actual and necessary expenses of such an examination are paid by the municipality, and the expense connected with any work away from the seat of government is borne by the organization or persons receiving the benefit thereof.⁶

The chief purpose, however, for which the state highway department was organized was to create a statewide system of improved roads. The method adopted was to place the initiative in planning this system and the responsibility for carrying out the plans upon the counties of the state, vesting in the highway department power to approve, reject and supervise the plans and their execution.

The county commissioners of each county are required to designate from ten to fifteen per cent of the total road mileage of the county as "state roads." This mileage must be outside of the limits of cities and towns of more than two thousand population, must be main traveled roads, and must be located so as to connect with state roads in adjoining counties.⁷ The selection of state roads must be approved by the highway department,⁸ and in the event that the commissioners of any county fail to make such a designation, the state highway department is authorized to do so.

⁶Bunn Supp. Sec. 7634c; S. L. 1915, Ch. 173, Art. I. Sec. 3

⁷Bunn Supp. Secs. 7634g. ff; S. L. 1915, Ch. 173, Art. II, Secs. 1, ff.

⁸Bunn Supp. Secs. 7634i-j; S. L. 1915, Ch. 173, Art. II, Secs. 3-4

The county engineer of each county surveys the state roads and prepares plans for their permanent improvement, in accordance with the standards established by the state highway department, and with certain standards prescribed by law.⁹ Plans so prepared, after approval by the county commissioners, must be submitted to the department for its approval.¹⁰ After the approval is secured, the county may proceed with its program of improvement, subject only to detailed legal provisions relating to the letting of contracts, payments, etc.¹¹

The law provides very specifically for the planning of the state road system in accordance with the standards set up by the state highway department, but does not set up any effective way by which the construction of roads in accordance with the plans as made and approved is assured. Compliance of the counties with the requirement as to the submission of plans is induced by providing for a state highway construction fund, supported by an annual ad valorem general property tax of one-fourth mill, which is held in trust by the state, each county being entitled to share in the fund to the amount of the tax collected from that county, providing it has complied with the law in regard to filing and securing approval of road plans, and has also levied an ad valorem road tax of one-fourth mill.¹² But after the plans have once been made and approved, the only procedure provided for their enforcement is through annual reports as to progress of work, made by the counties to the highway department.¹³ No provision is

⁹Bunn Supp. Sec. 7634k; S. L. 1915, Ch. 173, Art. II. Sec. 5

¹⁰Bunn Supp. Sec. 7634l; S. L. 1915, Ch. 173, Art. II. Sec. 6

¹¹Bunn Supp. Sec. 7634m, ff; S. L. 1915, Ch. 173, Art. II. Secs. 7, ff.

¹²Bunn Supp. Secs. 7634x-z; S. L. 1915, Ch. 173, Art. III.

¹³Bunn Supp. Sec. 7634s; S. L. 1915, Ch. 173, Art. II. Sec. 13

made for inspection or supervision of the road work by the department. In 1917 an appropriation of two million dollars was made to be used in giving state aid, in proportion to area and population, in highway construction, to counties which provided an equal amount for the same purpose from their own funds. This fund was to be expended under the jurisdiction of the highway department, which was authorized to make the surveys, plans and specifications, to supervise the construction work and to require the county authorities to maintain the roads so built on penalty of forfeiting future state aid.¹⁴ The 1923 legislature passed a highway law (S. L., Ch. 112) which modified in some particulars the provision described above, and gave much wider supervisory powers to the state commissioner of highways. It also made certain salary changes.

The 1915 highway law provided for the registration of all motor vehicles operated within the state. This registration was entrusted to the highway department. At the time of registration, which occurs annually, a registration fee was to be collected which should be in lieu of all other taxes, state and local, upon motor vehicles.¹⁵ In 1919 this law was replaced by a new enactment which changed the basis of computing the amount of the fee, and the regulations governing expenditure of the proceeds.¹⁶ As the law now stands,¹⁷ the highway department is entrusted with the registration of vehicles and the collection of fees. It is also the duty of the department to enforce the registration law, and

¹⁴S. L. 1917, Chap. 238.

¹⁵Bunn Supp. Chap. 73 Art. I-A, Secs. 7634z1-7634z12: S. L. 1915, Ch. 173, Art. IV.

¹⁶S. L. 1919, Chap. 290.

¹⁷1922

special enforcement officers¹⁸ are employed for this purpose. Of the money collected, ten per cent is paid to the state treasurer and placed to the credit of the general revenue fund of the state. The remaining ninety per cent is paid to the treasurers of the respective counties in proportion to the total amount of the fees collected from each county. Of this total, each incorporated town and city receives for its street and alley fund twenty-five per cent of the total sum received by the county treasurer by virtue of motor licenses collected in such town or city. Of the remainder, fifty per cent is credited to the county road maintenance fund; the other fifty per cent goes to the "state highway construction fund" of the county and is applied on the building of the "state road" system.

By the Act of July 11, 1916,¹⁹ the United States government inaugurated the policy of appropriating money to aid in the construction of "rural post roads"²⁰ in the several states. The Act provides for the apportionment of the sums so appropriated among the several states in proportion to their area, to their population and to the mileage of rural free delivery and star routes within their borders, one-third of the total being distributed according to each factor.

These funds are apportioned by the Secretary of Agriculture and are expended under his direction in co-

¹⁸S. L. 1919, Chap. 211

¹⁹39 Stat. L. 355, Fed. Stat. Ann. 1918 Supp. 639

²⁰This term has received very liberal interpretation. A rural post road may be defined as any road outside the limits of a city or town of over 2500 population, or along which the average distance between houses is greater than 200 feet, over the substantial length of which the United States mails are now transported or may reasonably be expected to be transported in the immediate future. See 31 Op. Atty. Gen. 109, (1917) Fed. Stat. Ann. 1920 Supp. 722, note.

operation with the highway departments of the several states, upon "projects" submitted by the departments, and approved by the Secretary. Plans, specifications and estimates of cost are prepared by the state authorities subject to the approval of the Secretary, and subject also to the requirements prescribed by the statute. Contracts are let and construction is carried on under the laws of the several states and under the direct supervision of the state highway departments, but in compliance with the requirements of the federal act, and subject to the inspection and approval of the federal authorities. The maintenance of these roads is placed on the states and their subdivisions, on penalty of losing future federal aid if they fail to maintain them properly.

In Oklahoma, since the state does not directly engage in the construction of roads the initiative in taking advantage of this proffer of federal aid rests with the counties. Project plans, specifications, etc. are all prepared by the several counties and submitted to the state highway department for approval. The department inspects the various projects, and if it approves them, submits the project statements, etc. to the Department of Agriculture as provided by the federal law. The highway department approves all contracts, supervises, inspects and accepts the work of construction, and has custody of the money appropriated by the county to pay its share of the cost. All payments, both from county money and from federal aid funds are made by the state highway department on verified claims for work done and materials furnished.

CRITICISMS AND RECOMMENDATIONS

The criticism of highway administration in Oklahoma

from the governmental viewpoint presents two main aspects: first, the relationship of the state highway department to the state administration in general; second, the present apportionment of highway functions between the state and the local governments.

The place of the state highway department in the state administration has been discussed elsewhere in this book. It is sufficient to say here that the fact that the head of the department is appointed by the governor and holds office at the pleasure of that official is conducive to executive responsibility for the conduct of the department. However, this responsibility is to a considerable extent done away with by the interference of independent administrative departments, and by the feeling which in large measures comes from that situation, that it is no use to blame the governor when things go wrong. Some minor reorganization of the department itself is desirable. Its usefulness would be considerably increased by reorganizing it into a department of public works, and placing it in charge of all of the architectural, engineering and construction work of the state. This proposal is discussed more fully in a previous chapter.

Oklahoma's present system of highway administration has been in operation since 1915. It must be admitted that so far it has failed to produce a real system of state highways, except on paper. What construction of improved roads there has been in the state is almost exclusively the result of programs carried out by the richer and more progressive counties. These isolated improvements do not constitute a state road system, and there is no assurance that they ever will, since poor or sluggish counties may refuse to complete the missing links. Even the system of improved dirt roads contemplated by the original

law has not been built or maintained.

There are several features of the present system of road administration which have made this situation practically inevitable. In the first place, since the county commissioners designate those roads which form the state system, local and personal considerations have played a large part in this selection. A commissioner's personal desire to have a good road past his house, or a desire to accommodate influential individuals, frequently determines the location of a state highway to the exclusion of the best interests of the system. Even the mandate that the state roads in each county should connect with each other has not always been observed. In the second place, the law does not provide adequate means by which the construction of roads according to the plans and specifications laid down by the highway department can be enforced. As we have seen, the initiation of plans rests with the counties. The carrying out of these plans rests also with the counties. The only authority which the state highway department exercises as of right is that of approving or rejecting these plans after they have been submitted to it. It has no right to demand the submission of plans, other than as furnished by the power of withholding approval of improper plans. After the plans have been accepted, the department has only advisory power. It has no right to take charge of construction itself, and no right of inspection, except as to federal and state aid projects. As a result, the amount and quality of the work actually done upon the state road system is entirely at the discretion of the various counties, and in many instances this discretion has not resulted in either sufficient work or lasting improvement.

In considering to what agencies the care of high-

ways should be entrusted, we should bear in mind that the authority which "bosses the job" will be the one which ultimately determines what sort of road system shall be established, and that accordingly, advisory, or recommending authority is not to be relied upon as a means of control; if our roads demand state control, then the actual authority as to road policy, the final word in such matters, must be given to the state. We should also remember that there are two objects to be attained by the road-building program, viz., the creation of a statewide system of main roads to provide for long distance transportation and communication between different parts of the state, and the development of good local roads as feeders to the main system so that every farmer may have a good road to his market town and to his county seat. The main system of highways will find its chief usefulness in the accommodation of tourist and other passenger travel, and in the transportation of freight by motor truck. To serve this traffic, it must connect the chief centers of the state by the most direct route, it must be planned as a unit, its different sections must connect with each other to form a statewide system. This can only be done when the selection of termini and the choice of route is vested in some organ of the state administration. Moreover, since the traffic over these main roads will be very heavy, some form of hard surface construction plus adequate maintenance of the surface must be provided. This calls for the expenditure of considerable sums of money, and for the employment of the highest type of technical skill in planning, construction and maintenance. This can be insured for the entire system only when the entire responsibility

for the main highway system is centralized in the state administration, since individual counties may not wish to undertake the financial burden involved, may not be able or willing to secure the technical service needed, may desire to evade in some way the standards set up for the state road system. Moreover, the policy of the federal government, as indicated by recent legislation, contemplates that federal aid money shall be used in building roads which form part of a connected statewide system, looking toward the welding of the different state systems into a national system.

The problem of the feeder roads is essentially different. The object there is to secure good local roads, reaching to every neighborhood, to every farm, so far as may be possible. The planning of such a system can be handled much better by local officials, who are in touch with local conditions and needs than it can by a state organization. Since the traffic is light, the expensive construction and technical skill required for the main roads will not be necessary, and the county administration will be able to give to them the special attention which they need, but probably would not get from the state highway department.

In view of these facts, it is suggested that the construction, care and maintenance of the main roads should be vested in the state highway department, or in the proposed state department of public works. The counties, on the other hand, should be given entire charge of the construction and maintenance of the feeder roads, subject only to such general supervision and advice as the state might find expedient in order to secure minimum standards of efficiency and accomplishment. This should be administered either

by the state highway department, or by the proposed department of local government. In this way the main arteries of traffic would be developed as a unified system, while the local roads would be left in the hands of those primarily interested in them, subject only to the guidance and supervision of the state in matters of policy. The administration of the automobile license tax is primarily a matter of finance, not of highway administration, and should be handled as such. This tax could be collected by the financial department of the county government just as other state taxes are collected, the state's share being paid to it by the local financial authorities. This would simplify the accounting problem of the state, by reducing the number of financial agencies, and at the same time would relieve the state highway department of a task in no wise connected with its other duties.

CHAPTER XVII.

EDUCATION.

Supervision of the public school system of Oklahoma is placed in the hands of a state superintendent of public instruction, who is elected by the people for a term of four years; and a state board of education. The superintendent of public instruction is the president of this board. The remaining members are six in number, and are appointed by the governor, with the approval of the senate, for terms of six years, two retiring in each odd-numbered year. Two of these members must be "practical school men."

The duties of the state board of education and of the state superintendent of public instruction are laid down by law in great detail; but it is not necessary to list them here, as their nature is well understood.

The state superintendent appoints three high school inspectors, who shall "visit all schools * * * doing high school work, consult with high school superintendents, principals, and boards of education, assist them in standardizing their schools and affiliating them" with the institutions doing work of college rank. High schools which do approved work are placed on the accredited list, and their graduates are allowed to enter without examination the state university, the normal schools, and other institutions of higher learning, upon the presentation of certificates. The inspectors also visit schools of college rank, in order to familiarize themselves with the work of such schools, and thus make possible close correlation between high schools and colleges. Another duty of the de-

partment of high school inspection is to conduct a free employment bureau for teachers.¹

County superintendents of public instruction are elected every two years. They are required to visit every school in the county "at least once in each term of six months, correcting any deficiency that may exist in the government of the school, the classification of the pupils, or the method of instruction in the several branches taught" and making "such suggestions in private to the teachers as (they) shall deem proper and necessary to the welfare of the school."² Many other duties are laid upon the county superintendent, among which may be mentioned the keeping a register of the teachers employed in the county, and various other records; and the apportioning of school funds "among the school districts and parts of districts in such county in the ratio of the number of persons of school age who are entitled to receive the same."³ He sends in an elaborate annual report to the state superintendent of public instruction.

SCHOOL DISTRICTS

The county superintendent of public instruction divides the county into school districts, or changes existing districts, under certain detailed restrictions.⁴ Each school district is organized "when the officers constituting the district board shall have been elected and qualified and shall have signified their acceptance to the county superintendent of public instruction in writing."⁵ A school district so organized becomes a body corporate,

¹S. L. 1919, Ch. 80

²S. L. 1913, Ch. 219, Art. 2

³S. L. 1915, Ch. 250

⁴S. L. 1919, Ch. 223

⁵S. L. 1913, Ch. 219, Art. III, Sec. 3

and "may sue and be sued, and be capable of contracting and being contracted with, and holding * * * real and personal estate."⁶ Special provisions of the law cover the disorganization or division of school districts' and the formation of joint districts "lying partly in two or more counties."⁸

An annual school meeting or election is held on the last Tuesday in March, at which all qualified electors of the district may vote. At such meetings members of the school board are elected, and such other matters are voted upon as the law designates, including the selection of a site for a schoolhouse, and the length of the school term for the ensuing year, "which shall not be less than three months."⁹ Special school elections may be called to vote on bonds for the erection of schoolhouses, or other matters.

The members of the district school board are a director, a clerk and a member, who hold office for three years, one retiring each year. The most important duty of this board is to "purchase or lease a site for a schoolhouse as shall have been designated by the voters * * * and * * * build, hire, or purchase such school house as the voters of the district, in a district meeting, shall have agreed upon, out of the funds provided for that purpose."¹⁰ This board also hires teachers, whom it may dismiss for "incompetency, cruelty, negligence or immorality,"¹¹ and has supervisory powers over the schools of the district. The county treasurer acts as

⁶Ibid. Sec. 4

⁷S. L. 1917, Ch. 97

⁸S. L. 1913, Ch. 219, Art. IV, Sec. 1.

⁹Ibid. Art. III, Sec. 12

¹⁰Ibid. Art. V. Sec. 14

¹¹Ibid. Art. V. Sec. 17

custodian of the funds of all school districts within the county, except independent districts.¹²

When it is necessary to form a school district "lying partly in two or more counties," the superintendents of public instruction of these counties shall "meet and proceed to lay off and form the same into a school district." This action is taken when application is made by five resident householders. The district thus formed is called a **joint district** and is placed under the jurisdiction of the superintendent of public instruction of the county "having the largest amount of territory embraced within the boundaries of such joint district." "If in the alteration of, or refusal to alter, the boundaries of any joint school district, any person or persons shall feel aggrieved," they may appeal to the state superintendent of public instruction, who shall hold a hearing on the matter. The language of the law is very ambiguous, but it appears to mean that the decision reached by the state superintendent is binding upon the county superintendents.¹³

"Each city of the first class, and each incorporated town maintaining a four years high school fully accredited with the State University, shall constitute an **independent district**."¹⁴ "Two or more adjacent independent school districts may be united for school purposes * * * in order to maintain a stronger school system than either of the districts can maintain alone."¹⁵ This union is accomplished by means of a special election; and the united district so formed possesses corporate powers. The board of education in the **united school district** con-

¹²S. L. 1921, Ch. 70

¹³S. L. 1913, Ch. 219, Art. IV

¹⁴Ibid. Art. VI, Sec. 1

¹⁵S. L. 1919, Ch. 69

sists of "one member elected from each ward of each city in the united district, and a treasurer who shall be elected from the * * * district at large."¹⁶ Except where especial provisions are made governing united school districts, the laws in regard to independent districts apply.

Members of the board of education in independent districts serve for four years. A part of them retire each two years, and their successors are chosen at the biennial general election. One member serves from each ward and one from outlying territory; or, if there be no outlying territory, one member is chosen from the city at large.¹⁷ In cities of more than 25,000 no representation is given to any portion of the school district which may be outside the city limits;¹⁸ and in cities of more than 50,000 two members of the board of education are elected from each ward, provided that the number of wards is not more than five.¹⁹ The treasurer of the city school board is elected for a two year term, at the general municipal election.²⁰ To the above provisions of the law are attached clauses specifically exempting charter cities from their jurisdiction, and permitting such cities to arrange these matters for themselves.²¹ Boards of education in independent districts "shall have power to elect their own officers, except the treasurer; to make their own rules and regulations, subject to the provisions of this article; to organize and maintain a system of graded schools; to establish a high school * * * and to exercise the sole control over the schools and school property of the city."²² They also

¹⁶Ibid.

¹⁸S. L. 1919, Ch. 97

¹⁹S. L. 1913, Ch. 219, Art. VI, Sec. 6a

²⁰S. L. 1919, Ch. 43

²¹S. L. 1915, Ch. 278

²²S. L. 1913, Ch. 219, Art. VI, Sec. 8

elect teachers and perform the other regular duties of school boards.

Any two or more "adjacent school districts or parts of districts or territory," containing an area of not less than twenty-five square miles, and an assessed valuation of not less than \$200,000, may, by vote of the electors therein residing, be joined into a **consolidated school district**.²³ Special state aid is given to such districts, so that they may build adequate schools.²⁴ Pupils in a consolidated district who live more than two miles from the school are furnished with transportation to and from school.

Union graded districts may also be formed from two or more adjacent school districts, by means of a vote taken at a special school meeting. A board is chosen at the same time, to have charge of all schools in the union graded district. Such a district may "establish a central school in which instruction shall be given to all pupils above the sixth grade, to and including the regular high school work, and such work shall not be duplicated in other schools of the union graded school district."²⁵ These districts also receive state aid.

Any one district may establish a graded or high school under the same provisions that apply to union graded districts.²⁶

For some reason unknown to the writer, the time for the annual meeting of the union graded school district is fixed as "the last Saturday before the first Tuesday in June," from two to six o'clock p. m.²⁷

²³S. L. 1919, Ch. 186.

²⁴See Chapter X, p. ———

²⁵S. L. 1921, Ch. 117

²⁶S. L. 1913, Ch. 219, Art. VIII, Sec. 6

²⁷Ibid. Sec. 7

SCHOOL BUILDINGS

Standards of construction and cleanliness are laid down by law for all school buildings "hereafter * * * erected in the State of Oklahoma at a cost of four hundred dollars, (\$400.) or more." The state superintendent of public instruction is required to prepare a book of plans and specifications for school buildings of one, two, three, and four rooms; and to furnish such plans and specifications free upon application by any school board. These provisions do not apply to buildings costing more than ten thousand dollars.²⁸

CURRICULUM

The law provides that in every school district "there shall be taught agriculture, orthography, reading, penmanship, English grammar, physiology and hygiene, geography, U. S. history and civics, arithmetic and such other branches as may be determined by the state board of education."²⁹ All instruction in these branches is to be given in the English language;³⁰ and no other language may be taught in grades lower than the ninth.³¹ Special stress is to be laid upon "American history and civics."³² Oklahoma history is also taught.³³

The state high school inspector is required to "prepare and articulate" courses of study for high schools.³⁴ One year of "American history and civics" is made a prerequi-

²⁸S. L. 1919, Ch. 63

²⁹S. L. 1913, Ch. 219, Art. III, Sec. 1

³⁰Ibid.

³¹S. L. 1919, Ch. 141

³²S. L. 1921, Ch. 112

³³Ibid.

³⁴S. L. 1919, Ch. 80

site to graduation from any high school, public or private.³⁵

Special provision is made for the study of agriculture. A state commission of agricultural and industrial education is created, consisting of the state superintendent of public instruction as ex officio chairman, the president of the state board of agriculture, and the president of the Agricultural & Mechanical College. "Said commission shall conform to the rulings of the state board of education, shall co-operate with all state normal schools, the Agricultural & Mechanical College and the state board of agriculture, and said boards and institutions are hereby required to co-operate with the state commission of agricultural and industrial education as far as practical (sic), and without interfering with the more immediate duties of said boards and institutions."³⁶ All teachers in the public schools are required to pass "a satisfactory examination in the elements of agriculture and allied branches;"³⁷ and all public schools are required to embody in their curricula : "the elementary principles of agriculture, horticulture, animal husbandry, stock feeding, forestry, building county roads, and domestic science, including the elements of economics."³⁸ Short practical courses in agricultural schools are provided, to which all white persons over fifteen years of age are admitted without examination.³⁹

Among the other things which are required by law to be taught in the public schools are: reverence for the flag of the United States⁴⁰, morality⁴¹, kindness to

³⁵S. L. 1921, Ch. 112

³⁶S. L. 1913, Ch. 219, Art. X, Sec. 1.

³⁷Ibid. Sec. 5

³⁸Ibid. Sec. 2

³⁹Ibid. Sec. 13

⁴⁰S. L. 1921, Ch. 111

⁴¹S. L. 1913, Ch. 219, Art. XVII, Sec. 7

animals and birds⁴², and the evil effects of alcohol.⁴³ Experiments "upon any living creature" are forbidden in the public schools.⁴⁴ No sectarian or religious doctrine shall be taught or inculcated in any of the public schools of this state; but "the reading of the Holy Scripture" is permitted.⁴⁵

As a matter of practice, the curricula of the public schools, while based upon the state laws, vary a good deal from one district to another, according to local needs and the enterprise and imagination of the school authorities.

COUNTY HIGH SCHOOLS

In counties where there are fewer than 2,000 persons of school age, county high schools may be established. The county superintendent of public instruction, and six trustees (two from the district of each county commissioner) chosen at general elections on a separate ballot without party designation, constitute the board of trustees of the county high school. The trustees serve for four-year terms, half of them being elected at each general election. The county superintendent acts as secretary and executive officer of the board of trustees; and the board choose their own chairman. The duties of the county board of trustees, which are set forth by law in some detail, are similar to those of other school boards. The county high school is supported by a county levy made by the excise board on the basis of an estimate furnished by the board of trustees.⁴⁶

⁴²Ibid. Sec. 8

⁴³S. L. 1915, Ch. 10

⁴⁴S. L. 1913, Ch. 219. Art. 17, Sec. 9

⁴⁵Ibid. Sec. 5

⁴⁶S. L. 1919, Ch. 96

COMPULSORY SCHOOL ATTENDANCE.

Oklahoma's astonishingly lax school attendance requirements are as follows: "It shall be unlawful for any parent, guardian or custodian, living in the state of Oklahoma, to neglect or refuse to cause or compel any person or persons who are or may be under his control as children or wards to attend and comply with the rules of some public, private, or other schools unless other means of education are provided, for sixty-six and two-thirds per cent of the term the schools of the district are in session, which shall apply to all children of the district over the age of eight and under the age of eighteen, unless they are prevented by mental or physical disability, the question of disability to be determined by the school district board or board of education upon a certificate of a duly licensed and practicing physician; provided, however, that this requirement shall not apply to a child between the ages of sixteen and eighteen years, who is (1) regularly and lawfully employed and has satisfactorily completed the work of the eighth grade of public schools or its equivalent, or (2) who has satisfactorily completed the full course of instruction provided by the public schools of the district where he resides."⁴⁷

"The law's weakness lies in the clause compelling the presence of a child for only two-thirds of the school term. In the first place, it is often impossible to determine until the end of the school year whether the child has been present the required length of time. Unless he has been absent more than one-third of the time it is impossible to prosecute the parent. There is no good reason why the child should not be compelled to attend

⁴⁷S. L. 1919, Ch. 59

school during the entire term. If he attends only part of the term it is difficult for him to do the work required for promotion, and retardation commonly results. * * *

“Not only is the law itself at fault, but provision for its enforcement is inadequate. The law states:

‘It shall be the duty of the School District Board, or any person living in the district, to make complaint to the Justice of the Peace of the township in which the school district is situated, against any person failing or refusing to comply with the provision. It shall also be the duty of the teacher of the school to ascertain if any person is absent without a proper excuse, and if so, to advise the County Superintendent of Public Instruction of that fact. Such County Superintendent shall then report such information to the County Attorney of the County, who shall file complaint in any Justice Court of the county where the offending party resides.’

“One of the weak spots in this provision is that the authority for enforcing the law is not placed in the hands of one person, for the district board, the county superintendent, and indeed, any person may bring action. As a result, each places the responsibility on the other. The superintendent says ‘it’s up to the district board,’ while the local board members refuse to prosecute their own neighbors and friends. As a result the law almost invariably is unenforced. A second disadvantage rests in the fact that the county superintendent is elected by the people. In order to carry out the provisions of this law he must prosecute some of the very people upon whom he depends for re-election.”⁴⁸

⁴⁸Child Welfare in Oklahoma, pp. 73-74

CHILDREN OF INDIGENT MOTHERS

Boards of county commissioners are required to include in their financial estimates a sum not to exceed eight thousand dollars "for the partial support of indigent women whose husbands are dead or insane, or prisoners in any state institution, providing such women are mothers of children under the age of fourteen years, and such mothers and children reside in such county."⁴⁹ Ten dollars a month for the first child and five dollars a month for each additional child is the maximum allowance that may be made; and when any child reaches the age of fourteen years the allowance for his benefit shall cease.⁵⁰ "The county court may, at its discretion discontinue or modify the allowance to any mother and for any child."⁵¹ Should the fund be insufficient to relieve all cases, "the county court shall select those cases in most urgent need of such allowance."⁵²

These provisions, which are included in the school law because their manifest intent is to make it possible for the children of an indigent mother to remain in school, are supplemented by the following section:⁵³

"If any widowed mother shall make affidavit to the effect that the wages of her child or children under sixteen years of age are necessary to the support of such widowed mother, then the county superintendent of public instruction shall, after careful investigation, upon the recommendation of the school district board, or board of education, furnish such child or children a certificate called a 'scholarship', stating the amount of

⁴⁹S. L. 1915, Ch. 183

⁵⁰Ibid.

⁵¹Ibid.

⁵²Ibid.

⁵³S. L. 1913, Ch. 219, Art. XIII, Sec. 4

wages such child or children are receiving, or so much of such wages as shall be deemed necessary so long as such child or children shall attend the public school in accordance with the provisions of this article, which aid shall be allowed and paid upon the certificate of the county superintendent of public instruction to the child or children holding such scholarship by the county commissioners."

CHILD LABOR

The child labor laws of Oklahoma are somewhat confused and contradictory. They provide that "no child under the age of fourteen years shall be employed or permitted to work in any factory, factory-workshop, theatre, bowling alley, pool hall, or steam laundry, and no child under the age of fifteen years shall be employed or permitted to work in any occupation injurious to health or morals or especially hazardous to life or limb." What occupations are included in the foregoing classification is a matter to be determined by the commissioner of labor. His "decision shall be final until such occupation or occupations shall be defined by law as safe for health, morals, life and limb."⁵⁴

A special list of dangerous occupations is embodied in the law, and children under sixteen are forbidden to work at these.⁵⁵ However, a subsequent provision that "no child under the age of sixteen years shall be employed" in these occupations, "unless such child is able to read and write simple sentences in the English language, or shall have attended some school during the preceding term for the time that attendance is compulsory under the laws,"⁵⁶ operates almost as a reversal

⁵⁴R. L. 1910, Sec. 3728

⁵⁵Ibid, Sec. 3729.

⁵⁶Ibid. Sec. 3731

of the foregoing prohibition. Special provisions are made in regard to certificates of age and schooling for children under sixteen who wish to be employed in the listed occupations.⁵⁷ Night work in these occupations is prohibited to boys under the age of sixteen and girls under the age of eighteen.⁵⁸ Girls under sixteen are forbidden to sell papers on the street or in any public place outdoors.⁵⁹ "No child under sixteen, and no girl or woman, may work underground in a mine or quarry."⁶⁰ "No child under the age of sixteen years shall be employed or permitted to work in any gainful occupation, except agriculture or domestic service, more than eight hours in any one day, allowing one hour each day for noonday meal and rest, or more than forty-eight hours in any one week. During the time that a child is at work at such occupation, the employer must provide suitable seats and permit their use so far as the nature of the work allows."⁶¹

It is generally agreed that the child labor problem in Oklahoma is not serious, except in rural districts. "This fortunate scarcity of children in most of the industries is due to several factors. Oklahoma is a new state and her industrial development is just beginning. From now on the further division of labor and use of mechanical devices will increase the demand for cheap workers and steps should be taken to prevent possible exploitation in the future. The progressive attitude of the people towards education is helping to develop a rational attitude toward child labor which should be cultivated and encouraged in every way. Many of the

⁵⁷Ibid. Secs. 3734-3736 (as amended by S. L. 1917, Ch. 182). 3738

⁵⁸Ibid. Sec. 3733

⁵⁹Ibid. Sec. 3730

⁶⁰Ibid. Sec. 3739

⁶¹Ibid. Sec. 3732

citizens came from progressive communities and believe that so far as children are concerned, education should take precedence over employment. Another favorable factor is the workman's compensation law which acts as a deterrent because it is not to the employer's interest to hire children as they are more liable to injury than adults. The eight-hour workday for minors under sixteen years has caused some establishments to employ only persons over that age, and the State Department of Labor in endeavoring to enforce the provisions of the child labor law has contributed toward reducing the abuse of children in industry. But there are phases of the problem as yet untouched by law and hence beyond the control of any administrative office."⁶²

The child on the farm or employed in domestic service is, as we have seen, unprotected by any law except that requiring his attendance at school for two-thirds of each term. Oklahoma is an agricultural state, and one of its most important crops is cotton. The cultivation and the picking of this crop are accomplished largely through the labor of children; and many of the state's most enlightened citizens are convinced that this is a necessary and inevitable situation. "In the spring-time we find the children aiding in the work of preparing the soil for the planting of cotton, corn, grain sorghums, etc. As soon as these crops are up, we see them hoeing, weeding, and cultivating. Frequently children are found doing work, especially in the handling of teams and cultivators, that is unquestionably beyond their strength. At harvest time we find them shocking the wheat and oats, shucking the corn, and picking the cotton. The work is hard and the hours are long. It is

⁶²Child Welfare in Oklahoma. p. 106

no uncommon sight to see the whole family—father, mother, and children even as young as five years—going down the cotton rows, dragging long bags fastened about the neck and shoulders, picking from dawn to dark . . . One sees the children robbed not only of their schooling, but also of their right to normal childhood, where play has its legitimate part.”⁶³

There is a growing conviction, strengthened, perhaps, by the participation of women in public affairs, that the state should not allow its child citizens to be exploited in this fashion, even by their own parents and for the support of their own family. Aside from the fact that no child ought to be responsible for this burden, which properly belongs to his parents, there are many cogent arguments for the limitation of child labor on the farm; of which those falling within the state's sphere of action are: the necessity for protecting the child's health, and for securing to him the education essential to the citizens of a democracy. The child on the farm will be seriously handicapped both physically and mentally until a more stringent child labor law and an adequate compulsory school attendance law are placed upon the statute books and rigidly enforced.

When twenty or more children from sixteen to eighteen years of age in any school district shall be employed (presumably at work other than domestic or agricultural, though the law does not say so), the board of education of the district is required to maintain part time schools for such children, for not less than one hundred and forty-four hours each year. Parents, guardians, and public officials responsible for school attendance are responsible for the attendance of the employed

⁶³Ibid. Page 133

children at the part time school. Employers are forbidden to employ children except under such conditions as will permit their attendance at the part time school or class; but the law does not apply to children over sixteen who have completed a common school course and two years of high school.⁶⁴

A state board of vocational education, co-operating with the Federal Board of Vocational Education, administers the state and federal funds available under the Smith-Hughes Act⁶⁵ and an Oklahoma act of 1917⁶⁶. This state board makes rules and regulations governing part-time classes; and reimburses districts which meet its standards to the amount of fifty per cent of the salaries of teachers, from the Federal Fund.⁶⁷

An Americanization commission, consisting of the governor of the state and six members appointed by him, is given power to "do all things necessary to carry out the intention" of a joint resolution of 1919,⁶⁸ providing that the public school authorities in the state shall organize a class in English and citizenship instruction, whenever such a class is requested by the petition of ten residents of foreign birth over sixteen years of age. This commission is charged with the duty of seeing "that public school officials are informed of the provisions of this resolution," and "that the foreigner is made aware of this opportunity."

A board of control, consisting of five persons appointed by the governor, supervises military training in the public

⁶⁴S. L. 1919, Ch. 235

⁶⁵Act approved Feb. 23, 1917

⁶⁶S. L. 1917, Ch. 155

⁶⁷S. L. 1919, Ch. 235

⁶⁸S. L. 1919, Ch. 315.

high schools which have established it; and arranges for at least one annual state contest among such schools.⁶⁹

One of the weakest spots in Oklahoma's educational system is the lack of adequate kindergarten facilities. The law⁷⁰ provides that kindergartens for children from four to six years old may be established in connection with the public schools, in any town, city, or school district having a population of twenty-five hundred or more; and also requires that the state normal schools shall make provision for the training of kindergarten teachers. However, it is the exceptional town, city or district which establishes kindergartens. This is due in part to the scarcity of money which impedes the progress of the schools in many districts, but it is also due to general indifference toward the education of very young children.

SEPARATE SCHOOLS

Education of white and negro children in the same schools, whether public or private, is prohibited under heavy penalties. Separate schools are maintained by the county under the management of the county superintendent of public instruction (except in independent districts, where the district board is in charge) for "the race having the fewest number of children in said school district: provided, that the county superintendent of public instruction * * * shall have authority to designate what school or schools * * * shall be the separate school and which class of children, either white or colored, shall have the privilege of attending such separate school or schools. * * * Members of the district school board shall be of the same race as the children who are entitled

⁶⁹S. L. 1917, Ch. 246

⁷⁰S. L. 1913, Ch. 219, Art. XII

to attend the school of the district, not the separate school.”⁷¹ When there are fewer than ten children of either race in a given school district they are transferred to a “school of their own color” in a neighboring district, unless this means that they must travel more than two and one-half miles.⁷²

Although the law provides for “impartial facilities for both races,”⁷³ it is claimed that the schools for negroes are not equal in equipment or teaching staff to the schools for whites. “In almost every city the excuse given by the superintendent for the poor condition of the negro schools is that under the present law governing financing, it is impossible to provide equally good schools for the two races.”⁷⁴

In the latest report of the state superintendent of public instruction is found the following description of the condition of the separate schools:

“I believe that the Legislature has earnestly endeavored to meet this situation; but it remains a solemn fact that the schools for negroes are not as good in many districts as they are for the whites. It is also a fact that many negro districts are better provided for than a very large number of the white school districts, and any plan which may be devised to help the separate schools must be broad enough in its scope to help all the schools.

“The supervision of the separate schools is entirely inadequate. In counties having both races, the schools for whites are so numerous that the county superintendent cannot give them close supervision. The county

⁷¹Ibid. Art. XV, Secs. 1-3

⁷²Ibid. Art. XV, Sec. 10

⁷³Ibid. Art. XV, Sec. 1

⁷⁴Child Welfare in Oklahoma, p. 98

superintendents should be allowed a special supervisor to look after the interests of the separate schools in all counties having a considerable number of such schools.

“During the past year we secured aid from the Jeannes Fund to be used in employing a colored industrial teacher to work under the direction of the county superintendent of Logan county. As a result, the schools for negroes in Logan county were closely supervised during the last year. Arrangements have been made for the county to pay one-half of the salary of this supervising industrial teacher during the current year, the other half being paid by the Jeannes Fund. Excellent results have been secured from this closer supervision in Logan County.

“The county superintendents need assistance in discharging their supervisory duties. This need is especially great in those counties having both white and negro populations because of the larger number of schools in the same area and the greater amount of administrative work incident to two distinct school systems.

“Arrangements have been made to secure aid from the Julius Rosenwald Fund for building negro school houses in the South during the current year. This aid is needed very much in this state as the separate school houses are built by the counties, usually from funds that would otherwise be applied to the maintenance of the schools.”⁷⁵

A law of 1921, authorizing the county excise board to levy up to two mills (in addition to the eight-mill levy permitted for current expenses) for the support of separate schools, county high schools, and common

⁷⁵Eighth Biennial Report, 1920, p. 41

schools, will undoubtedly do much to relieve the present unfortunate situation of the separate schools.⁷⁶

A very interesting and important decision has recently been rendered by the supreme court of Oklahoma, in a case which tested the application of this law.⁷⁷ The excise board of Logan County reduced the estimate made by the Board of Education of the city of Guthrie for the support of the separate schools, to an amount which the board of education declared to be "inadequate and insufficient." A mandamus was therefore sought against the excise board, to compel it to raise the estimate and increase the levy in order that the separate schools of Guthrie might be maintained on an equal basis with the white schools. The supreme court dismissed the appeal because the tax-rolls had been made up and most of the taxes paid for the year; and a "writ of mandamus will not lie where its issuance would work injustice or introduce confusion and disorder." But the court made it very clear that it is "the duty of the county excise boards in the respective counties where separate schools are maintained, to annually levy a tax roll on all taxable property in such counties sufficient to maintain the separate schools, and in all independent districts where separate schools for white and colored children are maintained, it is the duty of the county excise board to make a sufficient levy to pay the cost of maintaining such separate schools, purchasing sites and erecting buildings in accordance with the budget submitted to the excise board by the board of education of such independent districts."⁷⁸

⁷⁶S. L. 1921, Ch. 48

⁷⁷Board of Education of City of Guthrie v. Excise Board of Logan County et al., 206 Pac. 517.

⁷⁸Ibid. Syllabus by the court.

The case is of sufficient importance to warrant further quotations:

"Section 9, Art. X, Williams' Constitution imposes a limitation of 8 mills for county current expenses upon the taxing power of the state, which is the Legislature (Schaff v. Borum, County Treasurer, 82 Okla. 284, 200 Pac. 191) for county purposes. But any county may levy not exceeding 2 mills additional for a county high school and aid to common schools of the county under the proviso to Section 9, Article X.

"Our conclusion is that the additional 2 mills is in addition to the 8 mills authorized to be levied for county purposes. That is, a county may levy, provided the Legislature has not placed other statutory limitation upon it, 8 mills for all purposes and if the 8 mills levy is insufficient to take care of the county's current expenses and have the separate schools of the county properly maintained, an additional 2 mills may be levied in aid of a county high school and of the common schools of the county, of which not over one mill may be used for high school purposes. But, if there be no high school in the county, there is no reason why the entire additional levy of 2 mills may not be used in aid of the common schools, including separate schools."

In construing S. L. 1921, Ch. 48, the court says:

"* * * but it was never intended or contemplated by the Legislature that an appropriation by county excise boards for the maintenance of separate schools could never in any event exceed a levy of 2 mills. A consideration of the whole act of the Legislature approved March 31, 1921, supra, makes it clear that it was the intention of the Legislature that a sufficient levy must be made for the maintenance of common schools in every county where the same are maintained,

even though such appropriations require a levy exceeding all other statutory limitations * * * as long as the levy is within the constitutional limitations.”

Undoubtedly the law in question, as interpreted in this case, will do much to strengthen the separate schools of Oklahoma.

TEXT BOOKS

A law⁷⁹ of 1923 establishes a state text book fund, for the purchase of text books in all basic subjects from the first to the eighth grades inclusive, for the free use of pupils in the public schools. The state treasurer is authorized to pay into this fund the net amount of money collected by the state insurance commissioner from all foreign insurance companies doing business in the state, except foreign fire insurance companies. For the fiscal year ending June 30th, 1923, \$600,000 is appropriated from the fund for the purchase of text-books, and for the next year \$350,000.

All textbooks and school apparatus for the use of the public schools of Oklahoma, to and including the twelfth grade, are selected by a textbook commission. The governor is ex-officio chairman of this commission, and the state superintendent of public instruction is ex-officio secretary. The other five members, who are appointed by the governor, must be “persons of recognized ability, residents of the state, and a majority of the textbook commission shall be active as teachers or superintendents in the public schools of Oklahoma.”⁸⁰ All members are required, “in addition to the oath prescribed by the constitution, to take an oath . . . to

⁷⁹S. L. 1923, Ch. 175.

⁸⁰S. L. 1919, Ch. 12, amending R. L. 1910, Secs. 7707, 7708, and 7730

faithfully discharge all the duties imposed upon them as members of the textbook commission, and that they have no interest, directly or indirectly in any contract that may be made under this article and will receive no personal benefit therefrom, that they will examine all books submitted carefully and faithfully.”^{s1}

Elaborate legal provisions are made for the procedure by which bids are received and specimen books examined. The books which are finally adopted must be used by all public schools in the state for a period of five years, when another series of adoptions is made. “Books by Oklahoma authors shall have preference, merit and price being equal.”^{s2}

The advantages of this plan are, that it enables children removing from one part of the state to another during the school year to carry on the work of their grade with the textbooks to which they have become accustomed; and that it saves money both for this reason and for the reason that in the course of five years several children in one family may use the same book.

Its disadvantages are so great, however, that it may well be questioned whether they do not heavily outweigh these advantages. They include, first, a false and artificial uniformity throughout a state which includes the most diversified elements and conditions of people. While conceivably certain basic texts should be uniform, in order that all children may be assured correct training in fundamentals, there should be a wide freedom in the choice of books in such fields as general science, required readings in English, and other subjects whose emphasis should vary with local conditions. Second, the present system makes a careful choice of books impos-

^{s1}Ibid.

^{s2}R. L. 1910. Sec. 7714

sible. Only a part of the members of the commission are schoolmen, and even these cannot be experts in every branch that is taught in the public schools. Even if they were all highly qualified judges, they could not possibly make a careful examination of all the books submitted for "adoption." The selections, then, must be more or less inexpert and haphazard. Again, the clause giving preference to Oklahoma authors is objectionable, as introducing personal and local considerations. Even the provision that the books of these authors must be equal in merit and price to others submitted, cannot do away with the "pork-barrel" idea underlying this feature of the law. Finally, the textbook commission is liable to the attacks of sinister influences. Without in the least suggesting that any member of such a commission has ever yielded to such influences, it is necessary to point out that since the "adoption" of a book for a five-year period is extremely profitable to a publishing house, the agents of such a house must be of almost superhuman virtue if they refrain from hinting that a division of profits in the shape of a "rake-off" might be forthcoming to the commissioner whose influence secures the adoption of the book in question. The fact that such a situation is possible, even though its possibilities are never acted upon, should be a sufficient reason for radical changes in the present law governing the choice of textbooks for use in the public schools.

FINANCING THE PUBLIC SCHOOLS

The state of Oklahoma has a permanent fund for the support of the common schools. When Oklahoma Territory was created, and when other lands were opened to settlement, Congress set aside certain tracts of land for the benefit of the public schools. Other lands were

added by the Enabling Act, and an appropriation of \$5,000,000 was made by Congress in lieu of school lands in the Indian Territory. Some of the school lands in Oklahoma have been sold, and their purchase price has been added to the \$5,000,000. The money in this common school fund is lent upon farm mortgages, and the school lands are leased. The interest and the rent thus coming in, together with the proceeds of the state levy for school purposes, (one-fourth of one mill) are apportioned on a per capita basis to all school districts in the state. The per capita amount (based on the school census) distributed during the year 1920 was \$2.87.⁸³

Both district and county may supplement the state apportionment by levies. In Art. X, Sec. 9, of the constitution of Oklahoma is found the following provision: "Any county may levy not exceeding two mills additional for county high school and aid to the common schools of the county; not over one mill of which shall be for such high school, and the aid of said common schools shall be apportioned as provided by law."

A law of 1921⁸⁴ provides that the county may levy, in addition to its levy for current expenses, not more than two mills for the support of common schools, county high schools, and separate schools. We have already discussed the significance of this law.

The constitution of Oklahoma provides (Art. X, Sec. 9) that the school district levy shall not be more than 5 mills on the dollar for the support of the common schools; except when the voters of any district increase this rate at a special election "by an amount not to exceed ten mills on the dollar valuation." Additional

⁸³Eighth Biennial Report, State Supt. of Public Instruction, 1920.

⁸⁴S. L. 1921, Ch. 48

levies are made to pay the interest on outstanding bonds and to provide a sinking fund for the payment of such bonds at maturity. Each district votes bonds for the construction and equipment of buildings; except in a few cases where the buildings are rented, or built on the annual rental plan.⁸⁵

The 1919 session of the Oklahoma legislature appropriated \$100,000 for each of the two school years ending respectively on June 30, 1920, and June 30, 1921, to be used for aiding weak rural school districts which had already levied 15 mills.⁸⁶ The 1921 session of the Legislature raised the sum appropriated for the second year to \$185,000.⁸⁷ At this session an appropriation was made of \$35,000, to be distributed through county superintendents for the aid of separate schools, "in any amount not exceeding two hundred fifty dollars (\$250.) for any one such separate school or room for colored children."⁸⁸

A special fund, described in Chapter X, is available to aid consolidated and union graded school districts in the construction of buildings. From this fund a sum not to exceed one-half the cost of the building, and not in any case to be greater than \$2,500, may be appropriated for any such district under certain conditions fixed by law.⁸⁹ A special tax levy of one-half mill, to be perpetual until discontinued by an election, may be voted for the maintenance of playgrounds under the auspices of the boards of education in independent school districts and cities of the first class.⁹⁰

⁸⁵S. L. 1913, Ch. 219, Art. V, Sec. 27

⁸⁶S. L. 1919, Ch. 62

⁸⁷S. L. 1921, Ch. 16

⁸⁸S. L. 1921, Ch. 36

⁸⁹S. L. 1919, Ch. 185

⁹⁰S. L. 1915, Ch. 35, and S. L. 1917, Ch. 242

Some districts derive small sums from tuition fees, charges for pupils transferred from other districts, and various miscellaneous sources. The Smith-Hughes fund for vocational education, as well as the Federal Indian fund, yield small sums which are used for the special purposes to further which these funds were established.

The gross production tax is a considerable source of income in certain counties. According to the present law,⁹¹ one-sixth of this tax (5 mills) goes to the aid of "the common schools of the county from whence the oil or gas and other minerals is produced." The result of such a system of distribution is, that in some counties the amount of money available for school purposes is so great as to be an actual encouragement to extravagance; while in other counties, in which there is little mineral wealth, all the sources of income available for the schools will not suffice to place them on a basis of real efficiency. There seems to be no good reason why the portion of the gross production tax which now goes to the county in which this tax is collected should not be placed in the common school fund of the state, and distributed like the other moneys which come into the fund. A change in the law governing the distribution of this tax could easily bring about this more equitable arrangement.

A bill passed by the 1923 legislature (S. L., Ch. 179) provided that when any school district in which lead or zinc is mined from tax-exempt Indian lands shall have made its maximum legal levy for school purposes, and shall have found the money from this and all other sources inadequate to its needs, it may receive from the gross production tax derived from the county in which it is located

⁹¹S. L. 1916, Ch. 39, Sec. 5

a sum equal to the difference between its resources and its estimated needs, which needs shall not be in excess of \$35 per child of school age enrolled in the district.

For some years those interested in the welfare of the school system have worked to secure two changes in the state constitution which would make more money available for the support of the schools. The first of these is the "vitalization" of Section 12A of Article X of the constitution, which provides:⁹²

"All taxes collected for the maintenance of the common schools of this State, and which are levied upon the property of any railroad company, pipe line company, telegraph company, or upon the property of any public service corporation which operates in more than one county in this State, shall be paid into the Common School Fund and distributed as are other common school funds of this State."

The second is a constitutional amendment⁹³ which would permit the school district to levy fifteen mills for the support of the schools, with an additional levy up to ten mills if this is authorized by the voters of such district at an election.⁹⁴

It seems imperative that either these methods or some others be employed to relieve the shortage of money which is now a serious handicap to the efficient functioning of the public schools in many districts.

The legislature of 1923 proposed an amendment to the constitution (S. L., Ch. 288) providing for a special state levy on an advalorem basis, sufficient to provide for a fund of at least \$15 per annum for each child in average

⁹²See Chapter I for further discussion of this amendment.

⁹³See Chapter IX.

⁹⁴S. L. 1921, Ch. 128. This amendment was defeated in August, 1922.

daily attendance, such levy to be made by the state board of equalization. From the fund thus created, the state treasurer, upon the recommendation of the state superintendent, would apportion this money to the various counties in accordance with attendance.

The legislature also made liberal grants of state aid to schools. (See chapter 3, 5, 164, of Session Laws, 1923.)

TEACHERS

The training of teachers is accomplished by means of six normal schools, special teachers' courses in many high schools, and courses in the colleges and universities designed to meet the needs of students who intend to teach. Teachers' training courses and normal institutes are also established, to be held yearly in each county; or in one of two or more adjoining counties which desire to unite for this purpose. Attendance of all teachers is required.

In each county a board of county examiners, consisting of the county superintendent of public instruction as ex-officio chairman, and "two competent persons, holders of first grade certificates or diplomas from some state university, normal school or agricultural college,"⁹⁵ appointed by him, give examinations four times a year to those desiring to receive teachers' certificates. These certificates are of three grades; and the law lays down requirements for obtaining a certificate of each grade.

Provisions for the issuing of temporary certificates, for the honoring of unexpired certificates in counties other than that in which they were issued, for the renewal of certificates, and for the issuing and renewal

⁹⁵S. L. 1913, Ch. 219, Art. XIV.

of state certificates, are embodied in the law.⁹⁶ No certificates are issued except to persons who have received a specified amount of academic or professional training.⁹⁷ Students who have completed a full course in a state normal school, or an equivalent course in an Oklahoma college, receive state life certificates valid in any school in the state.⁹⁸

SPECIAL SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

Space will not permit a description of the various special schools, normal schools, colleges and universities which complete the educational system of Oklahoma. A mere mention of these schools, together with certain commissions and boards whose functions directly concern education, must suffice.

The State University at Norman and the University Hospital at Oklahoma City are controlled by a special board of regents. Other institutions managed by separate boards of regents are: the Oklahoma College for Women at Chickasha, the Oklahoma Military Academy at Claremore, the Oklahoma State Business Academy at Tonkawa, the School of Mines and Metallurgy at Wilburton, the Miami School of Mines at Miami, and the Colored Agricultural and Normal University at Langston. The State Board of Education supervises the six normal schools, located respectively at Edmond, Alva, Weatherford, Ada, Tahlequah, and Durant; as well as the School for the Blind at Muskogee and the School for the Deaf at Sulphur.

The State Board of Agriculture is placed in charge of the Agricultural and Mechanical College at Stillwater,

⁹⁶Ibid.

⁹⁷S. L. 1915, Ch. 282

⁹⁸S. L. 1917, Ch. 241

the Cameron State School of Agriculture at Lawton, the Conner State School of Agriculture at Warner, the Murray State School of Agriculture at Tishomingo, and the Panhandle School of Agriculture at Goodwell. A Board of Managers controls the State Training School for White Boys at Pauls Valley, the State Industrial School for White Girls at Tecumseh, the East Oklahoma State Home for White Children at Pryor, the West Oklahoma State Home for White Children at Helena, the State Training School for Colored Boys at McAlester, the State Training School for Colored Girls at Taft, and the Deaf, Blind and Orphans' Home for Colored Children at Taft.

The State Board of Affairs supervises the Institution for the Feeble Minded at Enid, the East Oklahoma Hospital for the Insane at Vinita, the State Hospital for the Insane at Norman, and the West Oklahoma Hospital for the Insane at Supply.

The State Historical Society and the Oklahoma Library Commission do valuable educational work whose nature is indicated by their names, but which cannot be described here for lack of space. Mention should be made of the following denominational schools, each of which has its own board of trustees or managers: Phillips University at East Enid, the University of Tulsa, Oklahoma Baptist University at Shawnee, and Oklahoma City College at Oklahoma City.

SPECIAL COMMISSIONS

The 1919 Legislature established a Childrens' Code Commission of "three competent persons" to be appointed by the governor. This commission was to have headquarters at the state capitol. Its duties were to "revise, consolidate and suggest amendments to the statute laws of the State of Oklahoma which pertain

to children;" to "unify the present laws pertaining to illegitimate, defective, neglected, dependent and delinquent children; and to their treatment, care, maintenance, custody, control, protection and reformation;" and to "suggest such amendments and additions as to them may seem best calculated to bring the statute laws of this state into harmony with the best thought on this subject."⁹⁹ The commission was to present its report to the governor by July 1, 1920, and the governor was to transmit this report to the next session of the legislature. No mention of such a report is found in the governor's message to the 1921 legislature, nor was any action taken by this legislature in regard to adopting a children's code.

EDUCATIONAL SURVEY COMMISSION

A law of 1921¹⁰⁰ created an educational survey commission of five members to be appointed by the governor, of whom one shall be the state superintendent of public instruction, who shall act as chairman. This commission, the members of which shall serve without pay, except reimbursement for expenses, shall employ paid experts "chosen from recognized authorities without the state * * * and as many as possible from the National Bureau of Education¹⁰¹." Members of the commission and experts or assistants "shall have the production of papers and records and are hereby empowered to administer oaths." They "may apply to the district courts of the State to compel obedience and testimony, and the district courts are hereby empowered to enforce obedience to such process."¹⁰²

⁹⁹S. L. 1919, Ch. 58

¹⁰⁰S. L. 1921, Ch. 194

¹⁰¹Ibid.

¹⁰²Ibid.

The commission, with this expert assistance, is authorized "to make a comprehensive survey of the public educational system of Oklahoma, including all schools and educational institutions supported in whole or in part from public funds, to determine the efficiency of the same and report its findings to the governor" on or before Sept. 1, 1922.¹⁰³

William T. Bawden, Assistant United States Commissioner of Education, was secured as director of the commission. A large committee of Oklahoma educators, with Dr. Phelan of the University of Oklahoma serving as chairman, have been co-operating with the members of the survey commission in many ways, including the giving of tests and the taking of educational measurements. There is no doubt that the report of the commission will afford the next legislature a valuable scientific basis for revision of the school laws.^{103a}

SUMMARY AND CONCLUSIONS

In judging the educational system of Oklahoma, allowance must be made for certain special conditions. The state is very young, and its entire history since the first authorized settlements by white men is exceedingly brief. Its population of 2,029,000 persons is scattered over an area of 70,000 square miles. It has only two cities with a population of more than 50,000 and only one other city of more than 25,000. Agriculture in various forms is its predominant occupation. In many parts of the state road building has made little progress. All these hindering factors should incline

¹⁰³Ibid.

^{103a}After this chapter was written, the report of the commission was published and presented to the 1923 legislature, which paid very little attention to its recommendations.

the critic to take a charitable view and to "point with pride" to a state educational system which already includes a great university, a large and efficient agricultural and mechanical college, six normal schools, and several other institutions of higher learning, as well as a system of common schools employing about 16,000 teachers¹⁰⁴.

Our achievements, however, must not blind us to our faults and to possibilities of progress. It is necessary to note certain weak points in the system.

The weakest point of all is, perhaps, the fact that, strictly speaking, there is no unified system of public education in Oklahoma. Each school district is allowed to fix the length of the term during which its own schools shall be conducted, provided that this term shall not be less than three months. The law should be changed to provide for a school term throughout the state of not less than thirty-two weeks, and preferably a term of thirty-six weeks. Only by means of a uniform term can children in all parts of the state receive systematic educational advantages.

Keeping the schools open, however, will accomplish nothing unless persons of school age are compelled to attend them. The present law, which permits absence from school for one-third of the term, destroys all certainty that the children of Oklahoma will grow up into educated citizens; or, in other words, it destroys the true purpose of the public schools. We have already mentioned its evil effects in some detail; so it will suffice here to repeat that the compulsory attendance law should be changed to require the constant presence at school of all children from six to sixteen who have not

¹⁰⁴Eighth Biennial Report of State Superintendent of Public Instruction, page 6, giving figures for 1920.

completed the eighth grade, and to impose heavy penalties upon parents or guardians who fail to see that their children attend school regularly. Careful and adequate provision should be made for the enforcement of this law.

It is open to question whether a uniform system of textbooks is desirable throughout the state; but if it is so considered, certain changes should be made in the law governing the textbook commission. There is no reason why the governor of the state should be a member of this commission, nor why all its members, instead of a mere majority, should not be persons engaged in teaching or administrative work in the public schools. It is absolutely essential that political influence be eliminated from a commission of this type, and that it be composed solely of experts.

A steady and widespread effort should be made to popularize the idea of kindergarten education. Few parents understand the almost immeasurable influence of the earliest years upon the later development of the child; but they should be informed on this point. The educator has recently learned much from the psychoanalyst to reinforce his rule-of-thumb verdict that, "As the twig is bent the tree's inclined"; and he knows that the consequences of neglect, or of wrong influences, during the impressionable period of very early childhood, are not easily overcome later. Oklahoma's educational system will not be adequate to meet her needs, nor in line with the best modern knowledge, until it includes kindergarten training as the rule rather than the exception.

It is evident that before most of these changes can be brought about, more money must be made available for the support of the public schools; and this money must be distributed throughout the state in such a way as to

place the various schools on a far more nearly equal basis than the present one. One possible remedy to the inequalities which now exist would be the levying of all school taxes by the state, the distribution of such taxes on a per capita basis, and their administration by county boards of education. At present the highest possible levy in some school districts, particularly agricultural districts, will not suffice to keep the schools open for more than a few months; while in districts where the real property of great industrial, mining, or public service establishments is located, a small millage levy will support the schools handsomely for long terms. Some districts, in counties where the gross production tax is large, raise no school levy at all. Since education is recognized as a function of the state, all children within the state should have equal educational opportunities, or, at least, should be given school facilities measuring up to a certain standard; and all property within each class should be taxed uniformly throughout the state to provide these opportunities. Counties or districts which might desire to provide exceptional facilities could still be permitted to do so. The chief objection to this plan is that it is new; and those who oppose it have much to say about the beauties of local autonomy. Education, however, is no more a matter for the locality to handle than for the private individual. The state should see to it that every one of its young citizens is properly educated.

Various other means may be employed to improve the financial situation of the public schools. Among these may be mentioned:

A change in the method of distributing the gross production tax, the levying of other special taxes for the benefit of the public school fund, the financial management of schools by the county rather than the district,

except in the case of cities, and the passing of the proposed constitutional amendments previously discussed.

That Oklahoma can afford to spend more money on her public schools, and that she must do so if she is to hold a place in the ranks of progressive states, is evidenced by two significant and rather startling facts. First, Oklahoma ranks fourteenth among the states in per capita wealth.¹⁰⁵ Second, her educational system, when compared with the educational systems of the other states, the District of Columbia, the Panama Canal Zone, Hawaii, and Porto Rico, ranks thirty-sixth.¹⁰⁶ That a larger portion of the state's great wealth should be employed for the betterment of the schools, even though this means the addition of a few mills to the tax levies in some parts of the state, hardly needs to be argued in the face of these facts.

¹⁰⁵The Financial System of the State of Oklahoma, F. F. Blachly, 1919; Ch. 1. Schedule 1.

¹⁰⁶An Index Number for State School Systems. Russell Sage Foundation, 1920; p. 45 et al.

CHAPTER XVIII.

THE CARE OF SPECIAL CLASSES.

One of the problems of the modern state is the care of those individuals who, for various reasons, either cannot be allowed complete freedom of action without danger to society, or are unable to care properly for themselves and cannot be provided for adequately by their relatives. It is the purpose of this chapter to describe the governmental machinery employed by Oklahoma in dealing with this problem. This will be done, by a survey of the agencies maintained by the state for dealing with each class, followed by a discussion of the general supervisory power vested in the commissioner of charities and corrections. The constitutional basis for this state activity is found in Article XXI of the Oklahoma constitution, which reads: "Educational, reformatory and penal institutions and those for the benefit of the insane, blind, deaf and mute, and such other institutions as the public good may require, shall be established and maintained by the State in such manner as may be prescribed by law."

Provision for the mentally defective is made through four state institutions: the hospitals for the insane at Norman, Vinita and Supply; and the Institution for the Feeble Minded at Enid. The legislature in 1917 enacted a comprehensive statute, the "Lunacy Law,"¹ dealing with the care of the insane. Under its provisions, the three hospitals above mentioned were assigned to the control of the state board of public

¹S. L. 1917, Ch. 174; Bunn Supp. 1918, Secs. 4575a-4575z19

²For a general discussion of the organization and powers of this board see Chap. IV. p. -----

affairs. ²The board manages the property and financial affairs of the institutions, employs superintendents and other employees, and exercises a general inspecting and supervisory power over them. Each hospital is locally managed by a medical superintendent who serves as its chief executive officer. ³The board of affairs, together with the medical superintendents and the state commissioner of health, are required to divide the state into hospital districts as nearly equal in population as possible. Patients are to be sent to the hospital located in the district in which they reside, unless that hospital does not have sufficient facilities to take care of them, in which case they may be sent elsewhere. An inmate of one of the other hospitals, "showing unmistakable dangerous or homicidal tendencies rendering his or her presence a source of danger to others" is to be removed to the hospital at Norman. The procedure relating to the commitment of lunatics to these institutions is treated in the chapter on local government.⁴

The lunacy law expressly excludes imbeciles and idiots from its operation. Such persons are cared for by the Institution for the Feeble Minded, located at Enid.⁵ The control of this institution is vested in the state board of affairs.⁶ It serves two purposes. It is a school for feeble minded children. Such children may be admitted upon the application of parents or others having them in charge, or upon the application of certain public officials.⁷ It is also an asylum for feeble minded adults whose relatives are unable or un-

³Bunn Supp. 1918. Sec. 4575g. S. L. 1917, Ch. 174, Sec. 7.

⁴See p. ———

⁵R. L. 1910, Secs. 7064-7086

⁶S. L. 1919, Ch. 57

⁷R. L. 1910, Sec. 7072

willing to care for them properly. In admitting adults the preference is to be given to females between the ages of sixteen and forty-five.⁸

For the care and restraint of mature criminals, the state maintains a penitentiary at McAlester and a reformatory at Granite, both under the control of the board of public affairs.⁹ The reformatory is designed to serve as a means of segregating young offenders from older and more hardened criminals. At the discretion of the board of affairs, persons between the ages of sixteen and twenty-five, sentenced to imprisonment for crime, may be confined either in the penitentiary or in the reformatory. If the term of imprisonment imposed on such offenders is less than five years, the trial court may, at its discretion, direct that the imprisonment shall be at Granite.

For still younger offenders, four state training schools are maintained; one for white boys at Pauls Valley, one for negro boys at McAlester, one for white girls at Tecumseh and one for negro girls at Taft. Delinquent children¹⁰ may be committed to these institutions by the county court after a summary hearing and investigation, which may be held on complaint of any person. A jury trial may be had on demand of the child or of any person interested in it.¹¹ Children between the ages of ten and sixteen may also be committed to these schools by the judge of a police court, county court, district court or any court of record having jurisdiction of criminal cases, on conviction of any

⁸R. L. 1910, Secs. 7081-7086

⁹R. L. 1910, Secs. 7117, 7126; S. L. 1915, Ch. 57; S. L. 1917, Ch. 211, S. L. 1919, Ch. 27

¹⁰See definition of delinquency, R. L. 1910, Sec. 4412

¹¹R. L. 1910, Secs. 4413-4426

offense against the laws of the state.¹² Children committed to these institutions remain there until they become of age, unless "sooner reformed."¹³ By an act of 1919,¹⁴ these four training schools, together with the state homes for children, were placed in charge of a board of managers, consisting of five members, appointed by the governor and serving during his pleasure. They are given the general management and supervision of the institutions, with the exception of fiscal matters, which remain under the board of public affairs, and are directed to maintain such a system of education as will make the inmates capable of self-support when they are dismissed.¹⁵

The statutes also define what children shall be regarded as "dependent and neglected," and provide for their commitment, under substantially the same procedure as that provided for delinquent children, to homes maintained for them by the state, or to the care of private families.¹⁶ The children committed to the state homes are to be placed in family homes as soon as possible, but are to be retained in the state homes as long as their best interests require. They are to be discharged on attaining the age of eighteen, and may be discharged, if capable of self-support, at sixteen. Children who prove vicious and incorrigible, or physically or mentally incapable, are to be returned to the county from which they were committed, as these

¹²R. L. 1910, Sec. 7112

¹³R. L. 1910, Sec. 7093, S. L. 1917, Ch. 255

¹⁴S. L. 1919, Ch. 188

¹⁵For general laws establishing and relating to these institutions see the following: School for white boys, R. L. 1910, Sec. 7087-7116; School for white girls, S. L. 1917, Ch. 255; S. L. 1919, Ch. 291; School for negro boys, S. L. 1915, Ch. 252; S. L. 1917, Ch. 69; S. L. 1919, Ch. 68; School for negro girls, S. L. 1917, Ch. 115.

¹⁶R. L. 1910, Secs. 4412-4426

homes are neither reformatories nor hospitals. For white children, homes are located at Helena and Pryor, taking children from the old Oklahoma and the Indian Territory sides of the state respectively.¹⁷ The home for negro children is at Taft, and is known as the Institute for the Colored Deaf, Blind and Orphans.¹⁸ As its name indicates, it receives blind and deaf negro children, as well as those who are "dependent and neglected." All of these schools are under the control of the board of managers mentioned above.

The state maintains special schools for the training of white children who are blind or deaf. The object of both schools is to give to these students such special training as will enable them to become self-supporting and useful citizens.¹⁹ The School for the Deaf is located at Sulphur, and is under the control of a board consisting of the state superintendent of public instruction, and three trustees appointed by the governor for a term of three years, one retiring each year. These appointments are subject to confirmation by the senate.²⁰ The superintendent of the school is appointed by the governor, but other employes are chosen by the board of trustees with the advice of the superintendent²¹. The School for the Blind is located at Muskogee, and is under the control of the state board of education.²²

Special provision for the adult blind was made by the legislature in 1919.²³ A board of commissioners for the blind, consisting of five members, was established.

¹⁷R. L. 1910, Secs. 6997-7011, S. L. 1917, Ch. 169

¹⁸R. L. 1910, Secs. 7014-7018

¹⁹R. L. 1910, Sec. 6989, S. L. 1913, Ch. 37

²⁰R. L. 1910, Secs. 6986-6991

²¹R. L. 1910, Secs. 6991-6992.

²²S. L. 1913, Ch. 37.

²³S. L. 1919, Ch. 221

The president of the state association for the blind is ex officio a member, and four others are appointed by the governor for a term concurrent with his own. The board selects from its own membership a president, vice president, and secretary. The secretary is ex officio field worker for the board, and it is his duty to obtain information concerning the adult blind within the state, to find employment for them and "to perform such other duties in connection with the duties of said Board as in the judgment of the Board may tend to make them more efficient." The board may also, with the consent of the state board of education, introduce industrial training in the State School for the Blind.

The state maintains two homes for veterans of American wars. The Union Soldiers' Home is located at Oklahoma City. Its management is vested in a board of trustees consisting of five members, appointed by the governor with the consent of the senate for a term of six years. A portion of the board retires every two years. Three trustees must have served in the Union army or navy during the Civil War and must be members of the Grand Army of the Republic, one must be a member of the United Spanish War Veterans Association, and one must be a veteran of the war with the Central Powers. The home admits, under the regulations prescribed by the Board "aged, dependent and honorably discharged United States Soldiers, Sailors and Marines, and their dependent wives, widows and mothers, and aged and dependent army nurses, and dependent honorably discharged members of the Oklahoma National Guard, who served as long as three years as members of said Guard."²⁴

The Oklahoma Confederate Home is located at Ard-

²⁴S. L. 1917, Ch. 271; S. L. 1919, Ch. 156

more, and its board of trustees consists of seven members, appointed by the governor for a term of four years. The membership is partially renewed every two years. Five members must be ex-Confederate soldiers or sailors, one a member of the Sons of Confederate Veterans and one a member of the United Daughters of the Confederacy²⁵. The home is to be used for the care of indigent and disabled soldiers and sailors of the Confederacy and their wives and widows.²⁶ The legislature in 1919 attempted to extend the privileges of the Home to veterans of the war with Germany but there is some doubt as to whether this attempt was successful, owing to the wording of the amendment²⁷.

The state also pays pensions to ex-Confederate soldiers and sailors and their widows. This pension system is administered by a commissioner of pensions who must have been a Confederate soldier or sailor, or be the descendant of such a veteran. He is appointed by the governor for a term concurrent with his own. Pensioners must have lived in Oklahoma for twelve months prior to applying for a pension, and must not own property of the value of two thousand dollars or be in receipt of an income of more than three hundred dollars per year. Totally disabled pensioners receive fifteen dollars per month, others receive ten dollars, with the exception of inmates of the Confederate Home who receive a monthly pension of five dollars.²⁸

A general supervisory power over all state and private institutions for the care of special classes is exer-

²⁵S. L. 1911, Ch. 49

²⁶R. L. 1910, Sec. 7136

²⁷“_____for the care of indigent and disabled soldiers and sailors who enlisted and served in the Army or Navy of the Confederate States of America during the Civil War and during the World War in 1917 and 1918. * * *” S. L. 1919, Ch. 196.

²⁸S. L. 1915, Ch. 54; S. L. 1917, Ch. 210; S. L. 1919, Ch. 15

cised by the commissioner of charities and corrections. This office is created by the constitution.²⁹ The incumbent is elected "in the same manner, at the same time, and for the same term" as the governor. The commissioner may be of either sex, must be twenty-five years of age and in other respects possess the same qualifications as are required of the governor.³⁰

Under the constitution, it is his power and duty "to investigate the entire system of public charities and corrections, to examine into the condition and management of all prisons, almshouses, reformatories, reform and industrial schools, hospitals, infirmaries, dispensaries, orphanages, and all public and private retreats and asylums, which derive their support wholly or in part from the State, or from any county or municipality within the State." It is the duty of officials to furnish the commissioner with such written information as he may demand. He is given power to summon persons to appear as witnesses and to produce books and papers. He may administer oaths and take testimony. The legislature may alter, amend or add to his duties or grant him additional authority.³¹ The legislature has made it the duty of the commissioner to investigate all public and private correctional and charitable institutions in the state at least once a year, and to conduct further investigations on sworn complaint of citizens of the state or at the request of the governor.³² He may order the abatement of any unlawful conditions dis-

²⁹Const. Art. VI, Sec. 27

³⁰The only qualifications other than age and sex imposed upon the governor are that he must have been for three years prior to his election a qualified elector of the state, Const. Art. VI, Sec. 3.

³¹Const. Art. VI, Secs. 28-30

³²R. L. 1910, Secs. 8091-8099

closed by these investigations and may prosecute those responsible for them if his orders are not obeyed.³³

It will be seen that the commissioner of charities and corrections has a very wide investigational and supervisory power. In the hands of an energetic commissioner, backed by substantial appropriations, it could be made a very effective weapon of state control, especially over local and private institutions. However, the work of the department has been greatly handicapped by a failure on the part of the legislature to provide funds sufficient to maintain an adequate staff or to conduct thorough and systematic investigations, as contemplated by the law and the constitution.

As has appeared from the preceding discussion, the care of special classes in Oklahoma is divided among a great many independent agencies.

This diffusion of responsibility is very bad from an administrative view-point, and any proposed plan of reorganization of the state government should include a concentration of power over these institutions into fewer hands than at present.

³³R. L. 1910, Sec. 8099

CHAPTER XIX

LOCAL GOVERNMENT

The two territories which were united in 1907 to form the state of Oklahoma were as unlike in political structure and experience as can well be imagined. Oklahoma was an "organized" territory, divided for the purpose of local government into counties and townships according to the custom of the northern and western states. Indian Territory, on the other hand, had never been organized and possessed no subdivisions corresponding to counties, if we except the districts which had been created for the purpose of recording legal instruments. The resulting lack of experience in local government of the eastern half of the new state has had an important bearing on the financial organization of Oklahoma counties, as we shall see later.

The form of county and township government previously existing in Oklahoma Territory was adopted, with a few changes, by the state of Oklahoma. The legislature of 1913, however, passed a law abolishing township government and transferring the functions previously performed by the township to the county governments. Forty-four counties were expressly exempted from the operation of this act and permitted to continue under the old method.¹ In August of the same year, the people adopted a constitutional amendment which provided that township government might be abolished in any county by popular vote, and that where township government was thus abolished, it might be restored in a similar manner.² Presumably this method of restoring

¹Bunn Supp. Sec. 8206a-8206g, S. L. 1913, Ch. 214

²Const. Art. V, Sec. 5a.

township government does not apply to those counties in which it has been abolished by legislative action. In 1915 the legislature enacted another law similar to that of 1913, save that only forty-one counties were exempted from its provisions.³ The seventh legislature reduced the number of counties in which township government was retained to twenty-one.⁴ These laws are not in conflict with the constitutional amendment previously adopted, for the amendment only provides a means by which the people of any county may dispense with township government in default of legislative action, and in no way restricts the power of the legislature to abolish the township organization by general law.

As in other states, the county in Oklahoma is a creation of the state government, and is utterly dependent upon that government for existence and for power. Its formation and alteration are subject to the regulations imposed by the constitution and by the law. Its functions and powers are limited to those prescribed and delegated to it by the state, and the procedure by which these powers are to be exercised is rigidly prescribed by law. The county cannot incur debt save for the purposes and in the manner, authorized by the state, and the amount of the debt is limited by the state constitution.

The law defining the general status and power of counties provides that each organized county shall be a body corporate and politic. As such it is empowered to sue and be sued, to purchase and hold property for its own use, to hold land sold for taxes as provided by law, to sell or convey any real or personal estate belonging to it, to make contracts and perform other acts in relation to its property and concerns, necessary to the exercise of

³Bunn Supp. Sec. 8206x-8206z4. S. L. 1915. Ch. 286

⁴S. L. 1919. Ch. 171

corporate or administrative power, and to exercise such other and further powers as may be especially provided for by law.⁵ The character of the constitutional and legal provisions governing the counties will be considered in connection with the various functions which the county governments perform.

According to the orthodox theory, counties are created by the state for reasons of administrative expediency, without regard to the wishes of the persons inhabiting them. In Oklahoma, however, as in many other new states, the initiative in organizing a new county lies with its inhabitants. The details of the law governing the creation of new counties are too numerous to be given here. Suffice it to say that upon the petition of fifty-one per cent of the legal voters of the territory concerned, an election must be called, and if at this election the formation of the proposed county receives the approval of sixty percent of the voters participating therein, it is thereby created.⁶ The changing of county boundaries and the location of county seats are also determined by popular vote.

The New York Bureau of Municipal Research employs a classification of governmental functions into three groups, according to the character of the functions, viz: the organizational, planning, and control group, the proprietary group, and the public service group. The first group contains the fundamental organization of government, the provision of a personnel, the determination of policy and making of plans, etc.; the second group comprises those functions which devolve upon the government by virtue of its being a business organization, i. e.,

⁵R. L. 1910, Sec. 1497.

⁶Rev. Laws 1910, Secs. 1503-1511. S. L. 1917, Ch. 120, S. L. 1919, Ch. 213

levying taxes, assessments, the collection, care, and disbursement of money; the third group consists of all those functions which render direct services to the people. We shall investigate the functions of Oklahoma counties under these headings.

The organization of county government is determined from above. Its structure is determined by general constitutional and legislative enactments, emanating from the people of the state as a whole, or from their elected representatives. As it is prescribed in detail by means of general legislation, no provision is made for variations in officers or functions because of differences in local conditions and problems.

Oklahoma, in common with her sister states, has endeavored to secure the utmost democracy in her county government, and in so doing has adopted—also in common with the remainder of the family—a method of selecting county officials which is best described as democracy gone to seed. Under this method the chief county offices are filled by direct election, in spite of the fact that the majority of these offices are not adapted to effective popular control. The elective officers are thirteen in number, namely: three county commissioners, county judge, county attorney, sheriff, county clerk, court clerk, county assessor, county surveyor, public weigher, county superintendent of public instruction, and county treasurer. The commissioners are chosen by districts, so that each voter is required to examine and decide upon the character and qualifications of candidates for only eleven offices at each election—if we omit the candidates for state and national positions who are seeking office at the same time. The county officers are

chosen for a two year term at the biennial general election in November.⁷

Clerks and deputies are appointed by their immediate superiors. For most of these appointments the consent of the county commissioners is required, but this consent tends to become a mere formality. The commissioners themselves appoint certain minor county officers, whose duties are of a technical nature, while a few functionaries, in charge of functions especially related to the state government, are appointed by the heads of the departments in connection with which they work.

Theoretically insuring democracy and good government, by providing for the individual and direct responsibility of every officer to the people from whom he derives his office, and to whom he must apply for re-election, this method of selection falls down in practice; first, because it diffuses responsibility, and, second, because it imposes upon the electors a duty which they cannot perform. By rendering the chief county officers independent of each other and of any co-ordinating authority, it enables the official who is charged with negligence in his duties to shift the blame upon some other functionary, whose co-operation was necessary but over whom he could exert no influence, thus defeating the attempt to fix responsibility for inefficient government. Moreover, it presupposes that the electors possess the time and ability to check up the character and qualifications of the candidates for all these eleven offices and in each case select the best man for the position, a supposition not justified by the facts. The duties pertaining to the majority of these offices are technical, professional, or wholly administrative, having nothing to do with the determination of the policy of the county government. The

⁷Rev. Laws, 1910, Sec. 1548, as amended by S. L. 1917, Ch. 203.

people cannot judge the qualifications of aspirants to such offices. The announcement of a candidate for county clerk in a certain Oklahoma county contained the statement: "All know his ability as a book-keeper," but, unless the people of that county are much better informed than those in other localities, less than one per cent of them—to be conservative—possess any such knowledge. Intelligent and effective control of offices of this nature by popular election is impossible, and the attempt to secure such control is rendered still more fatuous by making so many positions elective that the voters, being finite creatures, are unable to give them proper consideration. Our county government would be much more democratic, because much more responsible and much more efficient, if the list of elective offices were limited to the county commissioners, and the others were filled by appointment. The selection of those officers whose duties concern the county alone should be vested in the county commissioners, while those whose functions force them to work in co-operation with, or under the direction of, departments of the state government, or, as in case of local judicial officers, whose duty assumes both a local and a statewide aspect, should be appointed by the local authorities, with the approval of the state department. The county commissioners should have general control of and responsibility for the conduct of the county administration, and should be held responsible therefor by the people. At the same time, the elimination of so many elective offices from the ballot would permit the voters to give careful attention to the merits and demerits of the candidates for the position of commissioner. More efficiency, still, might be secured by restricting the commissioners to the determination of the general policy of the county, placing the control of administration, including the appointment

of the county administrative officers, in the hands of a county manager, appointed by the commissioners, after the plan adopted in so many cities.

The county commissioners constitute the policy-determining body of the county, within the limits prescribed by the constitution and by the laws. County policy is circumscribed very closely by constitutional and legal provisions, and the problem of its determination is chiefly a question as to whether the county shall or shall not do certain things which the state has definitely given it authority to do. This concentration of planning authority in the hands of the commissioners is conducive to the formation of unified plans, and, if accompanied by a greater degree of control over the administrative officers of the county, would make them a body which could be held responsible by the people for county administration in both of its branches, for "planning the work and working the plan."

The making of financial plans for the county government is also entrusted to the commissioners, but, as will be seen, this is subject to the control of another body, namely, the county excise board. The work of this organization and its effects will be discussed later, but it should be noted that its control over the amount of county revenues may often prove embarrassing to the commissioners and fatal to their financial plans. Financial planning is also circumscribed by the fact that the salaries of county officers and their deputies, as well as the amounts which may be spent for certain purposes, are fixed by law.

The proprietary functions of the Oklahoma county government are distributed among a number of elective officials. The manner in which each of these functions is to be exercised is rigidly prescribed by law,

and in some instances is also subject to constitutional limitations.

The assessment of property, with the exception of that of public service corporations, which is assessed by the state board of equalization, is performed by the county assessor. Beginning on January fifteenth of each year, he visits each city and voting precinct in the county, and secures the statements of the taxpayers as to the amount and value of the property owned by them which is subject to the general property tax. After compiling the property lists from these statements, adding thereto all property which has not been voluntarily listed, with an additional assessment as penalty for such dereliction, he delivers the lists to the county commissioners, who act as the county board of equalization and have authority to raise, lower, and adjust individual assessments. County assessments are subject to review and adjustment, as between counties, by the state board of equalization. After the county excise board has fixed the tax levies for the year, it certifies them to the assessor, who thereupon makes out the tax rolls, showing the total amount of personal, real estate and corporation taxes, and delivers them to the county treasurer for collection.⁸

The county excise board levies all taxes for the county and for the townships, cities, towns and school districts within the county. This body was created in 1910, and was originally composed of the county judge, county clerk, county attorney, county treasurer and county superintendent of public instruction. In 1917 its membership was increased by the addition of the county assessor and one county commissioner to be chosen by the board of

⁸Rev. Laws, 1910. Sec. 7373, Bunn. Supp. Secs. 7365a-7365p. S. L. 1911, Ch. 152.

county commissioners.⁹ To this board are submitted the estimates of the county and of the local municipal subdivisions at the close of the preceding fiscal year, together with itemized estimates of the amounts required for the current year. The board has power to examine these reports, and may revise them, either by striking out, increasing, or decreasing specific items, or by the addition of new items which have not been asked for by the officials submitting the estimate. Having revised and approved the estimates, the excise board appropriates the sums necessary to meet the approved expenditures. It then ascertains the total assessed valuation and appropriation of the county and of the respective subdivisions, and levies the taxes in each for the following year, with an additional allowance of ten per cent for delinquent taxes. In making these levies, the excise board must keep within the limits prescribed by law for the tax rates of the various subdivisions.

The county treasurer is responsible for the collection of the general property taxes for the state, for the county, and for the local units, as they appear on the tax roll delivered to him by the assessor. Other moneys, fees, etc., due to the county, are collected by the officers empowered to secure them. Such money is required to be paid over daily to the county treasurer, who is the official custodian of all money belonging to the county.¹⁰ The county treasurer pays over to the state and local treasurers monthly all moneys which he has collected on behalf of the state or of the local governments. County funds are paid out by the treasurer on the presentation of warrants drawn by the county clerk. The various records and accounts which are to be kept by the treasurer and by

⁹Session Laws 1917, Ch. 226.

¹⁰S. L. 1917, Ch. 104.

the county clerk for the purpose of accounting for the money in the hands of the former, are prescribed by law. The state examiner and inspector is required to examine without previous notice, the books of each county treasurer twice each year, and is required to prescribe a uniform system of book-keeping for such officers in order to facilitate the performance of his work.¹¹

The incurring and payment of indebtedness by the county is subject to limitations, both constitutional and legal. The constitution requires that the indebtedness shall be incurred only with the consent of three-fifths of the voters, that the total indebtedness of the county shall not exceed five percent of its assessed valuation, and that it shall be repaid within twenty-five years from the date of its origin.¹² The constitution also requires that a sinking fund shall be established to insure such repayment. The legal limitations include laws passed to enforce the constitutional requirements, and, also, rules governing the procedure by which bonds are to be issued, the denominations in which they may be issued, the interest to be paid, etc. These provisions vary according to the purpose for which the bonds are issued. In general, the interest rate is limited to six per cent. Repayment is provided for by means of sinking funds, which may be invested in bonds or warrants of the state or of any subdivision thereof. No provision is made for the issue of serial bonds.

The purchase, maintenance, care and sale of county property is vested in the county commissioners, subject to the legal rules laid down for their guidance. The provision of a court room, of offices, supplies, and equipment for the various county officials, is also entrusted to the commis-

¹¹Const. Art. VI, Sec. 19.

¹²Const. Art. X, Sec. 26.

sioners. The enumeration of such functions as the making of surveys and plans for public work by the county surveyor, the keeping of records by the county clerk, the consideration of claims against the county by the county commissioners, concludes the list of proprietary functions exercised by the county officials in Oklahoma.

The public service functions of government are those which are of the most general interest, because it is for their performance that the government is created and authorized to exercise the functions of the two preceding classes. The activities of those two classes are necessary in order that the government may exist; it is the performance of public services that justifies its existence.

The administration of justice and the protection of person and property within the county may be dismissed with a few words. These services are, strictly speaking, performed by the state rather than by the county, although the county is the unit for their administration, and the compensation of the officials charged with these duties is paid out of the county treasury. The constitution provides for a county court in each county with original jurisdiction in civil and criminal cases, and appellate jurisdiction, civil and criminal, over the justice of the peace courts.¹³ These latter courts—also provided by the constitution—have limited original jurisdiction, co-extensive with the county in misdemeanor and civil cases. Both justices of the peace and county judges act as examining and committing magistrates in felony cases. The method of selecting the county judge has already been described; the justices of the peace are elected by districts. The county attorney, sheriff, and constables—the latter being chosen in the same manner as the justices of the peace—

¹³Const. Art. VII, Secs. 11-17; S. L. 1917, Ch. 11.

perform the duties commonly assigned to such officers in all states.

The activities of the county in regard to public health are conducted under the supervision of the state board of health. The county superintendent of public health is appointed by the state commissioner for a term of two years, and is subject to removal by the same authority. His duties pertain chiefly to the prevention and suppression of contagious and infectious diseases, for which purpose he is empowered to abolish nuisances dangerous to the public health, to establish quarantine, to destroy impure or diseased articles of food, to enforce the rules and regulations of the state board of health, and to make special regulations, in co-operation with the county commissioners, to prevent the spread of epidemics in times of emergency.¹⁴ Inasmuch as this work is, and should be carried on under the regulation and supervision of a department of the state government, it is proper that the officer in charge should be appointed and removed by that department. The county may, if authorized by a majority vote of the people, establish a county hospital, issuing bonds for its construction. The management of such hospital is vested in a board of control of from five to nine members, of which the county physician is ex-officio chairman, the other members being appointed by the county commissioners.¹⁵

The county performs several important functions in regard to education. It levies a tax—not exceeding one mill—in support of the common schools; it supports the “separate schools”, if there be any;¹⁶ and the county superintendent of public instruction is entrusted with various

¹⁴Rev. Laws, 1910, Secs. 6791-6802.

¹⁵S. L. 1919, Ch. 273.

¹⁶An act of the seventh legislature provides that separate schools within independent districts must be supported by such districts. S. L. L. 1919, Ch. 28.

duties, chiefly supervisory.¹⁷ The county superintendent, as he is generally termed, an elective official, must possess a first grade teacher's certificate and be a resident of the county. He is vested with a general supervisory power over the schools and school boards in the several districts of the county. He receives reports of school affairs from teachers and from school boards, and in turn makes annual reports to the state superintendent, regarding educational affairs in the county. He establishes and changes school districts, subject to restrictions imposed upon him by law. He apportions among the school districts of the county, in proportion to their scholastic population, the money contributed by the state and county for the support of common schools.

The county superintendent is ex-officio chairman of the board of county examiners, and appoints the other two members of the body, which has charge of the issuance of teachers' certificates. This board is directed to hold examinations at stated intervals at places designated by the county superintendent, and to issue certificates to the applicants who pass these tests and "satisfy the board of their good moral character and their ability to teach and govern a school successfully."¹⁸ The board may issue teachers' certificates of three grades, according to the age and experience of the applicant, the subject in which he is examined, and the grades attained therein. Third grade certificates are valid for one year, and only in the county in which they are issued; second grade certificates are good for two years, and are valid in the county in which issued and in the counties contiguous thereto, while first grade certificates are good for four years, and are valid in any county in the state. The fact that certificates of the two higher grades are good in

¹⁷Bunn Supp., Ch. 74a, Art. II; S. L. 1913, Ch. 219, Art. II.

¹⁸Bunn Supp., Sec. 8050z 193; S. L. 1913, Ch. 219, Art. XIV, Sec. 2.

counties other than that in which issued makes it impossible for any county to maintain a high standard for certification. The incompetent teachers in a county which seeks to maintain a high standard have only to go to another county in which the standard is low and there secure the desired certificate. To remedy this situation the state superintendent of public instruction in his biennial report for 1916, recommended that the validity of certificates issued by county authorities be limited to the county in which they are issued, and that the issuance of statewide certificates be restricted to the state department of education.

Counties having a scholastic population of less than two thousand may establish and maintain county high schools. The county high school when established, is under the control of a board of trustees, consisting of the county superintendent, who is ex-officio secretary and executive officer of the board, and two members from each commissioner's district of the county, elected for a four year term, half of them retiring biennially. The powers of these trustees are of the type usually entrusted to a school board.¹⁹

The Oklahoma school laws provide for the separation of the students of the white and negro races.²⁰ In districts containing over ten children of school age belonging to the race having the fewest number of children in the district, a "separate school" is to be maintained for the children of that race.

These separate schools are supported by the county, a special tax being levied for that purpose, and are under the control and supervision of the county superintendent,

¹⁹S. L. 1919, Ch. 96.

²⁰S. L. 1913, Ch. 219, Art. XV.

by whom the teachers are employed.

The biennial report of the state superintendent of public instruction, issued in 1916, contained an interesting recommendation for the re-organization of the county and local educational activities, the motive being the improvement of the rural school facilities. Under this plan, the electors of the county, outside of the independent districts—cities of the first class and incorporated towns maintaining a four-year high school affiliated with the state university—would elect a county board of education, consisting of three members, and having control over all the public schools of the county, except those in the independent districts. This board would be given broad administrative powers and would appoint the county superintendent for a term not exceeding five years. Such centralization of educational activities is advisable from several standpoints, but it does not seem either desirable or expedient to thrust the responsibility of choosing three more officers upon an already overburdened electorate. It would be better to vest this broad administrative power in the hands of the county superintendent, and to have him appointed by the county commissioners, preferably with the advice and consent of the state department of education, which should also have the power to recommend his removal for cause.

Several functions of the class denominated as charities and corrections are assigned to the county government in Oklahoma. These relate to the relief of the poor, the care of the insane, and the custody of prisoners in the county jail.

The support of the aged and indigent, "as may be prescribed by law", is a duty imposed upon the counties of the state by the constitution.²¹ By law the supervision of

²¹Const. Art. XVII Sec. 3.

this function is vested in the county commissioners, who are ex-officio overseers of the poor. It is their duty to provide for the proper relief and care of all paupers who are residents of the county, and also to provide for the temporary relief of non-resident indigents, pending their transfer to the county or state of their legal residence. In order to furnish the necessary facilities for this service, the commissioners are authorized to establish a poor farm, either buying or renting the property therefor; to employ a superintendent for the poor farm, and to exercise general supervisory and regulatory power over it. In case the maintenance of a poor farm is not deemed advisable, the commissioners may arrange for the care of the poor by contract.²² Poor farms have been established in but few counties of the state, and according to the biennial report of the state commissioner of charities and corrections for 1915-1916, only two counties which had established such farms had at this time adequate facilities for the care of the paupers.

The administration of poor relief by the county government has been unsatisfactory in Oklahoma. This is due to several causes. In most of the counties of the state there are but few persons who need such relief. These counties justly feel that it is neither right nor expedient for them to spend large sums of money in supporting a poor farm in order to care for the few paupers within their borders. Even where the county does maintain a poor farm, it is unable to employ a superintendent who is an expert in such work or to provide adequate facilities for the care of the inmates. Moreover, in counties which contain a large city, the county authorities often refuse to care for the poor within the city, leaving them to be provided for by private charity or by the municipality. All

²²Rev. Laws, 1910, Secs. 4525-4'29, 4536, 4540.

these factors combine to render the relief of the poor by the county government unsatisfactory and inefficient. The remedy appears to be the transfer of this function to the state government. By caring for all the poor of the state in one institution adequate facilities could be provided, competent officials could be employed, the friction between county and city would be done away with, and the waste caused by the duplication of institutions would be abolished.

The care of the insane is a state function in Oklahoma, but the commitment of patients to state asylums is in charge of county officers. A person of unsound mind may be committed to an insane asylum by order of the county judge, if the judge is convinced by the testimony of two physicians and by a personal examination that the individual in question is unfit to be at large. A jury trial may be had on demand of the alleged lunatic or of his relatives or caretakers²³.

The law requires every county to establish a "prison", which is to be used for keeping persons awaiting trial or duly committed as witnesses, those duly sentenced or committed to jail, and those awaiting transportation to the state prison. The control of the county jail is vested in the sheriff, subject to the rules for its regulation and government prescribed by the judge of the district court. The sheriff provides board and other necessities for the prisoners, for which he receives such compensation as may be prescribed by the county commissioners. It is the duty of the commissioners to provide supplies, fixtures, and repairs for the jail, and to appoint a physician, paying him a salary if they deem it necessary.²⁴

Those governmental activities which have as their pur-

²³S. L. 1917, Chap. 174.

²⁴Rev. Laws, 1910, Secs. 4579-4590.

pose the promotion of the general economic welfare form a very important division of the public service functions. The chief functions of this sort which are assigned to the Oklahoma county are the construction and maintenance of roads and bridges and certain activities in aid of agriculture. The supervision and oversight of these functions, as well as the determination of the extent to which they shall be performed, are, in general, entrusted to the county commissioners, although there are a few exceptions to this rule.

By law it is made the duty of the county commissioners to co-operate with the state board of agriculture in protecting livestock against contagious and infectious diseases, and especially to aid in the suppression and eradication of the Texas fever tick.²⁵ Such co-operation is rendered by the construction of dipping vats, the employment of livestock inspectors, and the purchase of disinfectants for use in the dipping vats. Live stock inspectors receiving compensation from the county are appointed by the county commissioners, but receive their authority from the state board of agriculture, and this authority may be withdrawn by the board at its own discretion. The commissioners may offer bounties for the destruction of bird and animal pests. They may co-operate with the United States Department of Agriculture in the conduct of farm demonstration work, but they may not expend over twelve hundred dollars annually for that purpose. In 1915 a law was enacted providing for a system of free county and township fairs, such fairs being held under the auspices of local fair associations. The county excise board may, upon the estimate of the county fair association, levy

²⁵Rev. Laws, 1910, Secs. 29-31.

a tax of not over one-fourth of one mill in aid of the free fair system.²⁶

Each county has an elective county weigher, who, with his deputies, performs the duties of weighing for the public, coal, cotton, corn, grain, hay and "all other farm products sold by weight." The weighers provide their own offices and equipment, and collect, as compensation for their services, fees, the amount of which is fixed by law.²⁷

The construction and maintenance of roads and bridges is divided between the county and the township governments. The county commissioners are required to designate from ten to fifteen per cent of the total road mileage of the county as state roads. The county constructs and maintains the state roads within its boundaries, the bridges and culverts on the state roads, and all bridges and culverts with a span of over twenty feet. The county commissioners have charge of this work, under the supervision and control of the state highway department. The county engineer, who is appointed and removed by the county commissioners, makes surveys, plans, and estimates, and supervises construction. The cost of such construction is borne by the county. Counties levying a general tax of one fourth of one mill for the construction and maintenance of highways, and carrying on such work under the supervision and direction of the state highway department, receive aid from the state to the amount of the one-fourth mill state road tax collected within their borders.

All public roads other than the state roads are designated as the township road system, and their construction and maintenance are entrusted to the township governments. Townships are also charged with the con-

²⁶S. L. 1911, Ch. 118 Bunn Supp. Secs. 27a-27w.

²⁷Rev. Laws, 1910, 1738-1748.

struction and maintenance of bridges and culverts on the township road system having a span of less than twenty feet. Where township government has been abolished, the control and supervision of the road and bridge work formerly assigned to the township is vested in the county commissioners, thus uniting the activities of this type under one central control.²⁸

The general relation of the county to the state and the supervisory and regulatory power exercised by certain branches of the state government over some of the activities of the county have already been noted. It has also been seen that some county officers exercise a supervisory power over other local officers. There remain to be considered two important phases of Oklahoma county government. One of these is the power over the finances of the towns, cities, and the other minor governmental units, exercised by the county excise board; the other is the so-called "attorney-general's law of 1913".

The organization and powers of the county excise board have already been described. The argument advanced in its favor at the time of its creation was that the towns and counties of the eastern half of the state, because of their previous inexperience in local self-government, were making unwise and extravagant expenditures which could best be checked by such a body as the excise board. Whatever its advantages as a check upon local financial excesses may have been, it has proved a source of constant irritation to the cities of the state. The excise boards are composed of persons who, through no fault of their own, are usually unacquainted with the problems and needs of the cities whose budgets they control, and hence often eliminate or reduce items which are regarded as

²⁸S. L. 1915, Ch. 173.

absolutely necessary by the municipal administrators. Friction and the curtailment of city activities have been the almost inevitable result. With the experience in local self-government acquired since 1907, the counties and cities of Oklahoma should be able to manage their own fiscal policy, and the abolition of the county excise board would be a great aid to effective and responsible financial planning by county and city administrators.

The lax enforcement of the prohibitory and other laws in some counties, especially in the oil fields, led to the enactment by the 1917 legislature of a measure commonly termed the "attorney-general's law²⁹." By the provisions of this law, the attorney general, whenever he has reason to believe that the gambling law, the prohibitory law, or other penal statutes of the state are being openly and notoriously violated in any county or city, and that the city or county officers are making no effort to enforce them, may institute ouster proceedings against the officials at fault. Provision is also made for the institution of such proceedings by direction of the governor or on the sworn complaint of five reputable citizens of the locality for "official misconduct," which as defined by the law includes wilful neglect of duty, voluntary intoxication in public, and criminal offenses involving "moral turpitude." In order to guard against a failure of such proceedings because of local sentiment adverse to the prosecution, the law gives the attorney general the option of instituting this suit either in the district court of the county in which the accused officer resides or in the supreme court of the state. Proof of the open and notorious violation of any of the penal statutes of the state which the accused officer is enjoined by law to enforce, constitutes

²⁹S. L. 1917. Ch. 205.

prima facie evidence of official misconduct, and unless controverted is sufficient ground for removal. Several local officials have been removed under this law, but in no case as yet has the original jurisdiction of the supreme court been successfully invoked. In refusing to take original jurisdiction over proceedings for the removal of the sheriff of Oklahoma County in September, 1920, the court based its decision on the ground that it did not appear that a fair trial could not be had in Oklahoma County, but members of the court expressed themselves as being in doubt as to the constitutionality of that part of the act conferring original jurisdiction in these cases on the supreme court, although no reason was assigned for this doubt^{29a}.

As we have seen, the structure of the Oklahoma county government is determined by the state and is uniform for all counties. No provision is made for variations in the governmental organization of particular counties which might be desirable because of differences in local conditions, such as might, for example, occur in counties of an exclusively or preponderantly urban character. This enforced uniformity has been condemned by many reformers who have urged home rule for counties with the right of determining their own form of government, similar to the privileges enjoyed by cities. California, however, is the only state which has adopted such a measure. In Oklahoma, where as yet there is but little difference in the conditions existing in the various counties, the alleged disadvantages of this uniformity have not been so apparent.

The most glaring defects of county government in

^{29a}Daily Oklahoman, September 8, 1920.

This case has not been reported, in either the official reports or in the private reporters, (1922).

Oklahoma are its decentralized organization and the method by which county officers are chosen. These two factors make the organization of our counties—as one authority has said of the organization of American county government in general—“ideally bad.” The multiplicity of elective officers defeats rather than insures democracy, and at the same time fosters inefficient government. Democracy is possible only where the electors are able to exercise an intelligent choice and where the elective officers may be held responsible to the people for their official acts. Neither of these conditions is obtainable under our system of county government. The electorate cannot intelligently choose the county officers because there are so many elective officers that for lack of time they cannot inquire into the character and qualifications of the candidates therefor, and because the duties of the majority of these positions are of a technical and administrative character. The qualifications which fit a man for such positions are not susceptible of determination by a plebiscite at the close of a political campaign. Furthermore, the difficulty of securing an intelligent choice of county officials by popular vote is increased by the fact that most of the positions are of minor importance so that little interest is taken in the contest for them. Moreover, the people cannot enforce responsibility upon their servants for the manner in which the county administration is conducted, because each officer is independent of all the rest, and there is no one to supervise the administration in general, to see that the officers co-operate with each other as they should. It is the duty of the people, and of the people alone, to see that the individual officer performs his tasks efficiently, and since, as we have seen, this is precluded by the number of the officers and the character of their duties, it is left undone.

The governmental inefficiency and irresponsibility fostered by these conditions is enhanced by the detailed legislative restrictions under which the counties are placed, by an improper distribution of functions between the state, the county and minor subdivisions, and by the lack of any well-organized, efficient system of administrative control and aid on the part of the state in respect to the local governments.

This situation is all the more deplorable when we remember that out of every dollar of taxes paid by the average citizen, at least eighty cents, and generally more, is spent by the county and other local governments. We elect governors and legislators, and command them to give us an economical government in order that our tax bill may be reduced, but it is beyond their power to reduce that bill to any appreciable extent. Relief from high taxes can only come when our local government is so reorganized as to be both efficient and democratic. This problem of reorganization has a two-fold aspect; first, the structural reorganization of the county government so as to provide for efficiency and responsibility; second, a recasting of the relationship and of the distribution of duties between the state, the county and other local governmental units.

In the reorganization of county government, the county commissioners should be retained as the only elective officers. They should be vested with the determination of the general policy of the county, and should be held responsible by the people for the degree of success or failure attained by the county in the performance of its functions. They should not, however, attempt to carry on, as at present, the detailed work of administration. As an elective, political, amateur body, the duties of the board of commissioners should be to vote the budget, to levy taxes, to de-

termine matters of general policy and to see that policy is honestly and efficiently carried out by professional administrators. The county commissioners should appoint the county manager, whose relation to the county should be substantially the same as that of a city manager to a city. He should be a non-political, professional officer, receiving a salary sufficient to attract able men into this type of career, and should be retained as long as he renders efficient service. All heads of departments should be appointed by him, and should be responsible to him for the proper performance of their duties. He should supervise the county administration, both in planning and in executing, and should be held responsible by the commissioners for the proper functioning of the county government.

The detailed work of county administration, instead of being distributed, as at present, among a large number of independent officers, should be grouped into departments, according to the type of function performed. Each department should be placed in charge of a single head, appointed by the manager, and held responsible to him for efficient conduct of the department. Subordinates should be appointed by the head of the department in which they work.

In connection with the functional reorganization of the county administration, there should be a reapportionment of functions between the county and other local governmental units and the state. As suggested in a later portion of this chapter, the township functions in regard to health and roads should be transferred to the county. Similarly, the county should be made the unit of school administration. In this manner, districts could be consolidated, duplication of teachers and equipment could be to some extent

avoided, centralized purchasing would be made possible, a uniform educational standard could be maintained; all at no greater cost than at present.

Some functions should be transferred from the county to the state. Justice in the apportionment of tax burdens requires that a uniform system of assessing property be followed throughout the state. This is impossible so long as assessment is entrusted to locally elected officers, and that duty should be assigned to the state department of finance. Judges, county attorneys, sheriffs, all are primarily engaged in state functions—the interpretation and enforcement of the law—and should be appointed by the state department within whose domain the particular duties of each fall, although, since the county attorney also acts as legal adviser for the county, it might be well to vest his selection in the county commissioners, subject to the approval of the state department of justice. Court clerks should be appointed by the courts which they serve. Since poor relief is for the most part a minor function, for the sake of economy it should be centralized, and those paupers who need public support should be cared for in a single state institution. Main highways, for the reasons stated in the chapter on highway administration, should be constructed and maintained by the state.

With this reapportionment of functions, the county administration could be taken care of by six departments, viz: finance, public welfare, public works, public records, education, agriculture. The department of finance should have charge of the collection of taxes and other revenues, the care of the county's money, the forwarding of state taxes to the state treasury, the disbursement of county funds on proper authority, and all other county financial administration. The department of public welfare should have charge of

the enforcement of the laws relating to compulsory education and child labor, should be entrusted with the duty of following up all persons discharged from hospitals for the insane and similar state institutions in order to see that they receive proper care, and should be given the oversight and supervision of all persons released on parole or probation. It should have charge of the work of looking after dependent, neglected, delinquent or defective children, should investigate the need of poor relief, and should have the administration of such "outdoor" relief as is given by the county. It should also have charge of the county activities in regard to health, such as the registration of vital statistics, the control and prevention of contagious diseases, the local supervision of water supplies and sewage disposal, and the county physician's office. If the county sees fit to employ a public nurse or to maintain a county hospital, such functions should be assigned to the department of public welfare. This department should also assist the state board of welfare and the state health department in making surveys, studies, etc., within the county. The functions above outlined are so closely related that it seems better to place them under one department, with such bureaus as the needs of the particular county may require.

The department of public works should be entrusted with the planning, construction, custody, and care of county buildings, the construction and maintenance of the county highway system, and all other public engineering work in the county, such as the making of surveys, etc. The recording of deeds and other instruments affecting real estate, and the keeping of public records within the county should be assigned to the department of that name. The functions of the county

weigher should be assigned to that department, also. The department of education should administer the schools of the county, under the county unit plan. The functions of the county in regard to agriculture should, in view of the importance of the industry to Oklahoma, be reorganized and made more efficient. The department of agriculture should be charged with farm demonstration work, the eradication of livestock diseases and other pests, the maintenance of fairs, etc.

With the adoption of this functional reorganization of the county government, the county would render a much wider service to the people and render it much more efficiently than at present, while complete democratic control would be retained. If the proposals for the administrative control of the counties, towns, etc., through a local government department, and for a state civil service department, as outlined in the final chapter, are adopted, still better results may be expected. Along with the establishment of such a system of administrative control, many of the strict legal provisions now applied to county government should be abolished, especially those relating to finance. The county excise board, with its amateur administrative control over the finance of counties, cities and towns, should be abolished in favor of the professionally organized local government department.

The foregoing suggestions for reform are based upon the supposition that it is desirable to retain the present status of the county as a semi-independent unit of government, selecting its own officers and determining its own policy, subject only to the general legislative and administrative control of the state. This supposition assumes that the functions to be performed by the county are of a purely local nature, that they

concern the people of the county alone, and that the efficiency or inefficiency with which they are performed in any particular county exerts no influence upon the welfare of the people of the state as a whole. When, however, we examine the different functions now performed by the county government, we find that practically all of those functions are of such a nature that very plausible arguments may be made in favor of placing them under the direct administrative control and supervision of the state government.

That the administration of justice and the enforcement of law are state functions is self-evident. To permit the counties to choose, by election or by appointment, the officers who are charged with the enforcement of state laws is to tolerate the local veto of legislation representing the "common sense of most" by any refractory county in which public opinion does not approve of some particular statute. The "attorney general's law" was passed in order to defeat this "local veto," but the means provided are inadequate because they are negative rather than positive. The measure furnishes a means of punishing unfaithful officers after they have permitted the state laws to be violated openly and notoriously, but it does not insure the choice of officers who will enforce the law in spite of all unfavorable local sentiment. Uniform and effective enforcement of all state laws can best be secured by entrusting such enforcement to state officers.

That the protection of the public health is a matter for state control and supervision is recognized in Oklahoma by the organization of the county health activities under the state health department. The county health officer is appointed and removed by the state health commissioner, and the regulations which are to be

enforced by the county health officer are made by the state health department. The advisability of placing the state government in charge of poor relief has already been discussed.

It has been a cardinal principle of American governmental theory and practice that education is a proper subject for local control, yet there has been a gradual tendency toward the vesting of educational activities in larger and larger units. Many states have now adopted the "county unit" system, and the state superintendent of public instruction and the state teachers' association are now advocating it for Oklahoma. Do not conditions call for a still more centralized and unified organization of education, statewide in character, whereby the curriculum, length of term, qualifications of teachers, and other matters of general policy would be determined by the state educational department, and the actual administration of education within the county would be placed in charge of an officer appointed by this department and subject to its control? The shifting character of our population, which results in the frequent transfer of pupils from one district to another, and the necessity of an enlightened citizenship in order that democracy may be successful, demand that our schools be maintained upon a uniformly high standard throughout the state, and that in no locality shall the children be deprived of proper educational facilities because of the inability or reluctance of the taxpayers to provide them.

A similar situation exists in regard to the construction and maintenance of highways. The development of the automobile, its increasing use for the transportation of both passengers and freight, have removed the provision and care of the public roads from the exclusive domain of the local governments and made it

a matter of statewide importance. Communication between the different sections of the state must not be interrupted because of the failure of some township or county to maintain its highways in a passable condition.

Thus we see that the chief public services now performed by the county are of such a nature that the welfare of the state as a whole requires them to be performed in a uniformly efficient manner. This cannot be assured if each county is permitted to determine the manner in which it will perform them, because the taxpayers in many counties may not be willing to bear the tax burden requisite to proper performance, and also because county officers are often unable or unwilling to secure the services of technical experts. On the other hand, the state government is able to put into operation a uniform system throughout the state and can command the funds and the expert services necessary to make that system a success, regardless of local opposition. These advantages would be secured by placing the state government in charge of all the public services now performed by the county governments.

The transfer of the public service functions to the state government would necessarily result in a similar transfer of the functions of the other two groups. The purchase, care, and maintenance of property and supplies would be allotted to the various state departments which took over the public service functions. Revenue for the different services would be provided by a state tax and expended by state officers. The assessment of property would also be performed by state officials, incidentally permitting the establishment of a uniform method of assessment throughout

the state. The provision of personnel and the making of plans would also be assigned to the various state departments. Under such a plan the county would cease to be a unit of local self-government, and would become a mere administrative subdivision of the state.

Such a change would indubitably result in a much greater administrative efficiency than is now obtained in the performance of these functions by the county government, and therein lies the strength of the argument for its adoption. However, it would necessitate an entire reorganization of our whole system of state and local administration, and, therefore, a very heavy burden of proof is imposed upon its proponents. There are several factors which render it of doubtful expediency, be the administrative advantages ever so many. The success of any democratic government is dependent upon the intelligent interest of the citizens in governmental activities. The administrative branch of the state government is in some degree a distant and, therefore, rather uninteresting organization from the standpoint of the average citizen. He has no personal acquaintance or contact with its elective officials. His own vote seems insignificant in its power to influence the state's policy, when merged in the grand total of the electorate. At its best the state government, from his point of view, functions more like a master than like a servant. Local functionaries, too, if their position and tenure of office depend upon the central government, tend to become inconsiderate of the desires, interests, and needs of the communities. Bureaucracy has ever been the cardinal defect of centralized government. In order to protect the legitimate desires of localities, as well as to preserve and stimulate the interest of the people in their local government, the county should be retained. It must be

admitted that the county fails to accomplish fully these results at the present time. County governments are notoriously inefficient. The interest of the people in them is chiefly confined to the biennial election, and even then is ordinarily perfunctory. But, as has been pointed out, inefficiency in the county is largely due to erroneous conceptions of democracy, faulty organization, and a lack of proper administrative control by the state. Lack of popular interest in the government may be traced to the same causes; and both evils should disappear when these causes are removed.

It is probable that if the county government were reorganized according to the suggestions previously made, the interests of the state as a whole could be safeguarded and the requisite efficiency attained, by establishing certain minimum standards of accomplishment for each of these functions and providing strict central supervision backed by a legal power to enforce these standards, at the same time leaving each county free to select its own officials, and to exceed these minimum standards. In this manner the desired efficiency and uniformity could probably be secured without such a radical step as the abolition of local self-government in the counties.

OTHER LOCAL GOVERNMENT UNITS

We now pass to the consideration of the government of the minor civil divisions of the state, viz., townships and school districts. Cities and incorporated towns are treated in another chapter and hence are not considered here. While, as has already been stated, township government has been abolished in all but twenty-one of the counties of the state, nevertheless in all counties the township continues to exist

as an administrative unit, principally in connection with the construction and maintenance of roads.

The townships are created, or discontinued, and their boundaries altered by the county commissioners, subject to the limitations that no city or incorporated town of more than fifteen hundred population shall be included within any township, and that any new township must have an area of at least thirty-six square miles, and a population of at least three hundred.³⁰

The governing body of the township is the township board, consisting of a trustee, a clerk, and a treasurer, chosen for a two year term at each biennial general election. This body audits and approves or disapproves all claims against the township, "provides for" all taxes for township purposes, subject to the usual control of the county excise board³¹, and has charge of the functions carried on by the township. The special duties of the clerk and treasurer are those indicated by their names. In counties where township government has been abolished, county commissioners perform the functions of the township board, while the clerical and financial work of the township has been delegated to the county clerk and county treasurer.

The most important public service function of the township is the care and maintenance of the "township road system". From these roads the township board selects those which are to be dragged during the year, appoints a township road superintendent who has charge of the maintenance and repair work on the township road system, and has general care of the local roads within the township.³²

³⁰Rev. Laws, 1910, Secs, 8172-8173.

³¹Rev. Laws, 1910, Secs. 8178, 7378.

³²Bunn. Supp., Sec. 7634p; S. L. 1915, Ch. 173, Sec. 10.

The township board acts as a board of health under the supervision of the county superintendent of health and the rules and regulations of the state board of health³³. Townships, acting through their boards, have the power to establish and maintain public cemeteries³⁴.

The abolition of township government in so many counties is an indication of its failure throughout the state. The functions performed by it were too few, the area involved too small, to arouse public interest or to permit efficient functioning. The abolition of township government was a step in the right direction. It should be supplemented by doing away with the township as an administrative unit, the abolition of the separate township funds, and a merger of all local highways into a single co-ordinate county system.

Each city of the first class, and each incorporated town maintaining a four-year high school fully accredited with the state university constitutes an independent school district³⁵. Adjacent outlying territory may be attached to an independent school district, on petition of a majority of the qualified voters of such territory by order of the county superintendent.³⁶ Other school districts are created by the county superintendent at his discretion, subject to legal limitations as to the area, population, and assessed valuation of such districts³⁷.

The functions of the ordinary school district are exercised by two bodies; the "meeting" of all the electors of the district; and the district board. Annual school district meetings are held on the last Tuesday in March³⁷. Special meetings may be called by the district

³³Rev. Laws, 1910, Sec. 6792.

³⁴S. L. 1917, Ch. 107.

³⁵S. L. 1913, Ch. 219, Art. VI, Sec. 1; Bunn Supp., Sec. 8050z 64.

³⁶S. L. 1913, Ch. 219, Art. VI, Sec. 2; Bunn Supp., Sec. 8050z 65.

³⁷S. L. 1913, Ch. 219, Art. II, Sec. 11; Bunn Supp., Sec. 8050t

board. The district meeting elects the members of the school board, designates the site of the school house, authorizes the sale of district property, and fixes the length of the school term³⁸.

The school board consists of three members chosen for a three year term, one member retiring each year. In addition to being qualified electors of the district, they must be able to read and write the English language. They have the general oversight and direction of the district school or schools. The board employs teachers, purchases supplies, provides and cares for the schoolhouse, and exercises a general supervisory power over the schools³⁹. The county treasurer is the custodian of the funds of all school districts except independent school districts in cities of the first class⁴⁰.

Independent school districts outside of cities of the first class are governed by the same organization as ordinary school districts. Cities of the first class choose a board of directors, consisting of one member from each ward, nominated by the voters of the ward but elected by the entire electorate, for a four year term⁴¹. If the district contains "outlying" territory, one member is nominated from such territory. If there is none, one member is nominated and elected from the district at large. Cities with a population of over twenty-five thousand do not elect a member from the outlying territory⁴². In cities of more than fifty thousand

³⁸S. L. 1913, Ch. 219, Art. 3, Secs. 6-9; S. L. 1915, Ch. 278, Sec. 1; Bunn Supp. Secs. 8050z12-8050z15.

³⁹S. L. 1913, Ch. 219, Art. 3, Secs. 10-15; Bunn Supp. Secs. 8050z16-8050z61.

⁴⁰S. L. 1913, Ch. 219, Art. 5, Sec. 34; Bunn Supp. Sec. 8050z57, S. L. 1917, Ch. 97.

⁴¹S. L. 1913, Ch. 219, Art. 6 Sec. 6; S. L. 1915, Ch. 278, Sec. 3; Bunn Supp. Sec. 85050z69.

⁴²S. L. 1917, Ch. 97.

population, two members are chosen from each ward.⁴³ Part of the board retires every two years.⁴⁴ Cities from adopt "home rule" charters may regulate the membership and term of office of their board of education by such charters.⁴⁵

The custody of the funds of such school districts is given to a treasurer, chosen for a two year term by popular vote. In the absence of charter provisions, city school officers are chosen at the regular municipal elections.⁴⁶

The board of education has general charge of the schools of the district. It selects the superintendent and the teachers.⁴⁷ It organizes and maintains a system of graded and high schools.⁴⁸ It has sole control over the schools and school property of the city. It prepares the school budget for submission to the county excise board,⁴⁹ and performs other functions necessary to the maintenance of the city schools, subject to the regulation of the general school laws of the state.

To promote better educational facilities in rural districts, provision is made for the combination of adjacent districts by the vote of a majority of the people of such districts. These combined districts, known either as consolidated or as union graded districts, according to the type of school maintained by them, are subject to the same governmental organization and have the same func-

⁴³S. L. 1913, Ch. 219, Art. 6, Sec. 6a; Bunn Supp. Sec. 8050z70.

⁴⁴S. L. 1913, Ch. 219, Art. 6, Sec. 6, S. L. 1915, Ch. 278, Sec. 3. Bunn Supp. Sec. 8050z69.

⁴⁵Ibid.

⁴⁶Ibid.

⁴⁷S. L. 1913, Ch. 219, Art. 6, Sec. 14; S. L. 1915, Ch. 71 Bunn Supp. Sec. 8050z78.

⁴⁸S. L. 1915, Ch. 219, Art. 6, Sec. 8; Bunn Supp. Sec. 8050z72.

⁴⁹S. L. 1915, Ch. 192 Bunn Supp. Sec. 8050z106.

tions as the ordinary school district.⁵⁰

The organization of school district government is open to little criticism. The line of responsibility runs from the teacher and administrative officers of the schools through the elective board to the people. There is no divided responsibility, no opportunity for the shifting of blame from one elective officer to another, such as we observe in so many other of our governmental units. That faults do exist in our system of public education is undeniable, but these faults, so far as they relate to government, are such as come from the size of the local units and the lack of efficient administrative control over them, rather than the governmental organization of the units. In many school districts, public sentiment will not support the schools adequately. In many others, the poverty of the district forbids such support. The solution of this problem may be found in the adoption of the county unit plan of school administration, coupled with a more insistent requirement of high standards, and a more effective administrative control by the state department of education.

⁵⁰S. L. 1911, Ch. 122; S. L. 1913, Ch. 219, Art. 7; S. L. 1915, Chs. 202, 184; S. L. 1917, Ch. 252, Ch. 278; S. L. 1919, Ch. 148, Ch. 186;

CHAPTER XX

MUNICIPAL GOVERNMENT

The municipalities of Oklahoma may be classified into three distinct classes: incorporated towns, cities organized by the legislature, and home rule cities.

Incorporated towns consist of villages or small communities which, in order to carry on certain common enterprises or purposes, have secured from the state a charter authorizing them to act as a municipal corporation. As a rule, these towns are of less than two thousand population, since larger places have the right to become cities.

Communities of more than two thousand may become cities upon following the procedure outlined by statute. Such places may adopt either the general code of the state prescribing the organization of such cities, their officers, their powers, duties and responsibilities, or they may frame their own charter. In the former case they are generally known as cities under the statutory form of government. In case a city decides to frame its own charter it establishes its own organization, determines what officers it shall have, outlines their powers and duties, and also determines in a general way the powers and duties of the city as a city. Such a charter is, however, by the constitution made subject to the constitution and general laws of the state.

TOWNS

When it is desired to incorporate a town in Oklahoma, the persons interested must make a survey¹ of the property to be incorporated and take a census² of the resident popu-

¹R. L. Okla. 1910, Sec. 663.

²Ibid. Sec. 664.

lation. The survey map and census must be left at some convenient place for examination by those interested in such application for a period of thirty days.³ One third of the whole number of qualified voters as well as the original applicants must next subscribe to a petition for incorporation as a town, setting forth the boundaries, the quantity of land embraced in the townsite, and the resident population. This petition, together with affidavits verifying the above facts, is presented to the board of county commissioners.⁴ The county commissioners being assured either by affidavit or by witnesses that the facts in the petition are true and that all previous procedure has been properly complied with, make an order declaring that such territory, with the assent of the majority of the voters therein, shall become an incorporated town, bearing the name contained in the application. This name must be different from that of any other town in the state.⁵ The commissioners include in the order a notice for a meeting of the qualified voters resident in the proposed town, at a convenient place, on some day within a month's time, to determine whether such territory shall become an incorporated town. The board gives ten days' notice of this meeting by publication and also by posting copies of the notice.⁶ The voters at the meeting select three election inspectors who receive the ballots and count the vote.⁷ In case the majority of votes cast are against the proposition, no further proceedings are necessary. If the majority of votes are in favor of incorporation, the result of the election is verified on affidavit by the inspectors, who report it to the board of county commis-

³Ibid. Sec. 665.

⁴Ibid. Sec. 666.

⁵Ibid. Sec. 667.

⁶Ibid. Sec. 668.

⁷Ibid. Sec. 670.

sioners at their next session. If the commissioners are satisfied of the legality of the election, they make an order declaring that the town has been incorporated under the name adopted.⁸ This order is conclusive of such incorporation in all suits by or against such corporation: "and the existence of such corporation by the name and style aforesaid shall thereafter be judicially taken notice of in all the courts and places in this State without specially pleading or alleging the same".⁹

When the inspectors receive the above mentioned order from the county commissioners, they divide the town into not more than seven or less than three districts for the purpose of electing the town officers. By both published and printed notice, they inform the voters of the time at which such officers are to be elected. The election must take place within twenty days from the posting of the notices.¹⁰

When an application signed by one-third of the legal voters of any incorporated town is presented to the town board of trustees in writing asking for a dissolution of the corporation and setting forth the reasons therefor, it is competent for the board, if they deem the reasons good, to call a meeting of the voters of the town by giving ten days notice, to determine whether the town shall be dissolved. The board of trustees preside at the election which is held at this meeting.

If a majority of all the votes cast are in favor of dissolution, provided that two-fifths of the legal voters of the town have taken part in the election, a statement of the vote, signed by the president of the board of trustees and attested by the clerk, shall be filed with the county clerk

⁸Ibid. Sec. 671.

⁹Ibid.

¹⁰R. L. 1910, Secs. 672 and 673.

(formerly register of deeds). Six months from the time when this statement is filed the town ceases to be a corporation. Any property belonging to the corporation, after the payment of the debts and liabilities, is disposed of in such manner as the majority of the voters of the community at a special meeting may direct.¹¹

Additions to incorporated towns are made in one of two ways: First, when individuals wish to have their property adjoining the town included in the town. Whenever lots adjoining the town are laid off and platted and a record is made with the county clerk, the trustees of the town may by resolution extend the boundary so as to include such lots. Immediately after passing the resolution the trustees file a copy of it, together with a plat and map of the addition, in the office of the county clerk. These lots thereafter form a part of the town.¹² Second, when the town itself desires to annex contiguous territory that has not been platted or laid out or recorded. In such case the trustees present to the board of county commissioners a petition setting forth the reasons for such annexation, accompanying it with a map or plat describing the tract which they wish to incorporate, verified by affidavit. Upon receipt of the petition the board of county commissioners gives thirty days notice of a hearing in a newspaper in the town, in the county in case there is no paper in the town, or, if there is no newspaper in the county, posts such notice in five or more public places within the corporation, and serves the notice on the owner or owners of the territory to be included in the corporation, provided that said owners are known and are residents of the county. At this hearing testimony is heard both for and against such annexation. If, after inspec-

¹¹Ibid. Sec. 674.

¹²R. L. Okla. 1910, Sec. 718.

tion of the map and the hearing of testimony the commissioners are convinced that the petition should be granted, they make an entry on the order book specifying the territory to be annexed, and describing its boundaries according to survey. This entry, or an attested copy of it, becomes conclusive evidence in the courts of such annexation.¹³

The governing body of such a town is the board of trustees, who elect a president from among their own number. They form a body politic and corporate,¹⁴ and are given detailed powers covering quite a wide range.¹⁵

The other officers of the town include the justice of the peace, the town marshal, town treasurer, town clerk, deputy marshals, and fire wardens. Their duties are prescribed by law, while their salaries are determined upon by the board of trustees in their by-laws.¹⁶

CITIES UNDER LEGISLATIVE ORGANIZATION

The next class of municipal organizations in the state of Oklahoma are called cities. Any town, village or community of people residing in a compact form in the state, having a population of two thousand inhabitants or more, as shown by the last federal census, and having its territory platted into lots and blocks, may become a city.¹⁷

In order to become a city the following procedure is required: A petition to this effect, signed by thirty-five per cent of the qualified electors, as shown by the last preceding general election, residing in the territorial limits of any town, village or community which has reached the

¹³Ibid, Sec. 719-720.

¹⁴Ibid, Secs. 677-678.

¹⁵For their general grant of powers, see R. L. 1910, Secs. 680-681.

¹⁶R. L. Okla. 1910. Secs. 701-709.

¹⁷Ibid. Sec. 526.

requisite size, shall be filed with the governor of the state. Each separate sheet of the petition must be authenticated by the affidavit of at least one credible witness that the signatures are true and genuine, and that the signers are qualified electors within such community. Within thirty days from the filing of such a petition the governor issues a proclamation calling an election to decide whether the community shall become a city, which is published in a newspaper of general circulation in the community in which the election is to be held for a period of at least twenty days prior to the election. It is the duty of the governor in the proclamation to establish as many polling places in each city as he deems necessary, to divide the proposed city into four temporary wards, and to appoint three judges and two clerks of election for each polling place. Not more than a majority of these election officers may be of one political party.¹⁸ These elections are conducted as nearly as may be, in accordance with the state election laws. All persons who have resided for thirty days next preceding such election, in the ward or precinct, and who are qualified electors of the state and of the county in which the town is situated, are qualified to vote at this election.

If the community wishes, at the same time that it votes upon the question of becoming a city, to frame its own charter, a board of freeholders is chosen at this election to prepare a charter. In case the proposed city wishes to remain under the organization laid down by the legislature, it votes at this same election for the city officers, consisting of a mayor, city clerk, police judge, city treasurer, city attorney, a marshal, who shall be chief of police, city assessor, street commissioner, treasurer of the

¹⁸Ibid. Sec. 527.

school board, two members of the school board and two councilmen from each ward.¹⁹

The county election board of the county in which the election is held acts as the canvassing board for such elections. It meets on the first Friday after the election to canvass the vote. The result of the vote upon the question of incorporation as a city is spread upon the journals of the board; and if the vote has been favorable, the candidates for the various offices who have received the highest number of votes are declared elected.

The county clerk, within five days after the canvass of the returns of the election, certifies to the governor whether or not the community has voted favorably upon whether it wishes to become a city.²⁰ If a majority of the votes cast at the election are in favor of the proposition, the governor shall within twenty days, issue a proclamation declaring such a municipality to be a city.²¹

The community thereupon becomes a city and as such is subject to the general laws of the state governing cities. The statutes lay down in some detail the powers and duties of municipal officers, in addition to determining who the officers shall be.

The mayor presides at all meetings of the city council, where he has the right to cast a vote in case the council is evenly divided. He has the "superintending control of all the officers and affairs of the city", and shall take care that the ordinances of the city and the provisions of the state laws are complied with.²² He signs the commissions and appointments of all elected and appointed officers and endorses all official bonds approved by the mayor and

¹⁹R. L. Okla. 1910, Sec. 530.

²⁰R. L. Okla. 1910, Sec. 532.

²¹Ibid. Sec. 532.

²²Ibid. Sec. 560.

council.²³ He signs all orders and warrants drawn upon the treasurer for money, and may require the city clerk to attest the same and to keep proper records.²⁴ The mayor has power to veto any ordinance passed by the council, with the proviso that any ordinance may be passed over his veto by a two-thirds vote of all the members of the city council. In case the mayor neglects or refuses to sign any ordinance or to return the same with his objections in writing at the next regular meeting of the council, the ordinance becomes effective without his signature.²⁵

The mayor communicates to the council from time to time such information as he deems they should have, and also recommends such measures as in his opinion will make for the well-being of the city.²⁶ He has the power and it is made his duty to enforce ordinances, and he is charged with the responsibility of seeing that officers who violate or neglect their duties are dealt with promptly. He is also given such jurisdiction as may be vested in him by ordinance over places within five miles of the corporate limits of the city for the enforcement of any health, quarantine, cemetery or waterworks ordinance or for the regulation thereof.²⁷ He may also call upon citizens to aid in enforcing the law.²⁸

He has the power of remitting fines and forfeitures, and of granting reprieves and pardons for offenses arising under the ordinances of the city, by and with the consent of the council. No fine or forfeiture may be remitted or pardon granted, however, except at a session of the coun-

²³Ibid. Sec. 561.

²⁴Ibid. Sec. 562.

²⁵Ibid. Sec. 563.

²⁶Ibid. Sec. 564.

²⁷Ibid. Sec. 566.

²⁸Ibid. Sec. 567.

cil, nor unless the reasons therefor, together with the order of remission or pardon, be entered upon the journal by the clerk. He has power to suspend all city officers against whom charges of incompetency or dereliction of duty are preferred, until such time as the mayor and council can act upon the case.²⁹

The mayor appoints, with the consent of the council, an assistant city marshal, a city engineer, a city physician, and such policemen and other officers as the mayor and council may deem necessary.³⁰

When any vacancy shall happen in the office of mayor, the president of the city council assumes the duties of mayor temporarily and his compensation for such services is the same pay that the mayor receives. In case a vacancy occurs in the office of mayor, more than ninety days prior to the next election, the person acting as mayor causes a special election to be held to fill the vacancy, giving ten days notice by proclamation.³¹

The city council and the mayor act as the legislative authority of the city. They hold regular meetings not less than once a month, as shall be prescribed by ordinance. Special meetings may be called by the mayor or acting mayor, upon request or notice, in writing, signed by least three members of the council, specifying the object and purpose of the meeting. This request or notice is read at the meeting of the council and entered at length upon the journal. No business may be transacted at the meeting except that specified in the notice. A majority of the elected councilmen are necessary to constitute a quorum to do business, but a smaller number may adjourn from

²⁹Ibid. Sec. 568.

³⁰Ibid. Sec. 570.

³¹Ibid. Sec. 569.

day to day and require the attendance of absent members.³²

The council has general powers of making ordinances and is vested with the control and management of municipal finances. It may divide the city into not less than four wards. The council has powers to provide for streets, avenues, lanes and alleys, and to make sidewalks and build bridges, culverts and sewers within the city. It may enact ordinances for the purpose of planting, maintaining and protecting shade trees. For the carrying on of all these purposes it has the power of making assessments, subject to certain restrictions that are imposed by law. The council may provide for making improvements of a general nature, including street intersections, and may in order to pay for them borrow money and issue negotiable bonds.³³

The law lays down in detail the procedure to be followed both as to sewers and as to street improvements.

Certain financial limitations, other than those arising from the vesting of powers in the county excise board described previously, are laid down by law. Thus, the mayor and council have "no power to appropriate or issue any scrip, or draw any order appropriated by ordinance, or ordered in pursuance of some object provided by law * * *" No ordinance providing for the borrowing of moneys or appropriating money is valid unless a majority of all the councilmen elected vote in favor of it. Such vote is taken by yeas and nays, and must be entered upon the record of the proceedings of the council.³⁴

The law lays down in detail the manner in which claims

³²Ibid. Sec. 571.

³³Ibid. Secs. 572-575. For the details in respect to sewers see R. L. 1910 Chap. 10, Art. III; for details in respect to street improvements see R. L. 1910 Chap. 10 Art. XII.

³⁴R. L. Okla. 1910, Sec. 577.

against the city shall be presented.³⁵ The city council can make no contract for any public work or improvement without first having secured an estimate of the cost of such an undertaking from the city engineer. No contract can be entered into by the council for any work or improvement for a total price exceeding the aggregate amount of this estimate.³⁶

A limitation is placed by law upon the annual expenditures that the city can make. The statute provides, "It shall be unlawful for any city council to issue any certificate of indebtedness in any form, in payment of or representing or acknowledging any account, claim or indebtedness against the city, in excess of eighty per cent of the amount levied." In case such a certificate of indebtedness is issued or in case indebtedness is contracted in excess of this amount, it becomes not a liability of the city but of the mayor or members of the council incurring it, unless there is cash in the treasury to pay such an obligation. Any warrants drawn in excess of eighty per cent of the amount levied for the current year, when the cash is not in the treasury to pay it, are not a charge against the city but against the mayor and the members of the council.³⁷ The constitution provides that a city may not levy over a ten mill tax in any one year.³⁸ The legislature has further limited the towns and cities of the state in this respect by providing that they cannot levy more than six mills.³⁹

The council is required to publish quarterly, in each year, a full and detailed statement of the receipts, ex-

³⁵R. L. Okla. 1910 Sec. 603.

³⁶Ibid. Sec. 602.

³⁷Ibid. Sec. 607.

³⁸Const. Art. X., Sec. 9.

³⁹S. L. Okla. 1917, Ch. 262.

penditures and indebtedness of the city, which shall be printed in a newspaper located in the city.⁴⁰

The council is given power to collect poll and license and occupation taxes. The poll tax must not, however, exceed one dollar a year on all able-bodied males between the ages of twenty-one and sixty years. Just what occupation and license taxes the city may levy and collect is laid down by law.⁴¹

The city, of course, derives the greater part of its income from the general property tax, from selling public utility services and from the state through the motor vehicle tax.

The city council is given considerable police power. It has power to enact ordinances to "restrain, prohibit and suppress houses of prostitution and other disorderly houses and practices, games and gambling houses, and all kinds of public indecencies."⁴² It may also restrain and prohibit "riots, routs, noises, assaults, assaults and batteries, petty larceny, disturbances or disorderly assemblies, and immoral or indecent shows, exhibitions or concerts, in any street, house or place in the city; and to regulate, punish and prevent the discharge of firearms, rockets, powder, fireworks, or other dangerously combustible materials in the streets, lots, grounds, alleys, or about or in the vicinity of any building."⁴³ The council further has the power to prevent stock of all kinds from running at large, to prevent racing or fast driving within the city, and to regulate streets as to use. It has large powers in enacting ordinances protecting the city from fire. Rules for the weighing and measuring of commodities sold in the city may also be laid down by the council. It has the

⁴⁰R. L. Okla. 1910, Sec. 579.

⁴¹Ibid. Sec. 580.

⁴²R. L. Okla. 1910, Sec. 583.

⁴³Ibid. Sec. 584.

power to make regulations to prevent the introduction and spread of contagious diseases, as well as to prohibit the carrying of firearms or other deadly weapons. It may fine or set to work vagrants and persons found in the city "without visible means of support or some legitimate business." Power is given to the council also to regulate railways, railway terminals, storage places, railway tracks, crossings, etc., and to prescribe regulations for the running of railway engines, cars and trucks within the city limits.⁴⁴

Under the constitution, as we have seen, the city has the power to establish and operate public utilities. By law⁴⁵ it is given the power to purchase or condemn land for city purposes, to erect and establish market places,⁴⁶ water supplies,⁴⁷ libraries⁴⁸ and reading rooms, and to make provision for the supply of electric lights.⁴⁹

HOME RULE CITIES

The third class of cities in the state consists of cities of more than two thousand which are not organized under the general state laws but which have established their own charters in conformity with the power given them by the constitution⁵⁰.

Such cities determine their own organization and also by charter outline their duties and responsibilities, subject to the limitations placed upon them by the constitution and the general laws of the state. These cities are familiarly known as home rule cities. So far, nearly all the cities of more than two thousand have availed them-

⁴⁴Ibid. Secs. 583-598.

⁴⁵Ibid. Sec. 594.

⁴⁶Ibid. Sec. 590.

⁴⁷Ibid. Sec. 592.

⁴⁸Ibid. Sec. 600.

⁴⁹Ibid. Sec. 593.

⁵⁰Court., Art. XVIII, Sec. 3.

selves of this privilege and have adopted their own charters. These charters show great variation in respect to the type of organization adopted, the powers and duties of the city, and also in respect to their conformity to what the courts have held to be general laws taking precedence over city charters.

Generally speaking, the home rule cities have adopted one of three forms of government—the mayor-council form, the commission form, and the city manager form. The details regarding the methods of organizing these cities are found in the next chapter. Since these forms are familiar to all students of government, they will not be discussed here.

What powers chartered cities have and do not have is a very difficult question to answer. The relationship between city and state is greatly complicated by the grant of home rule. In view of the complexity of this problem and also its importance to those interested in municipal government it has been considered advisable to discuss it at some length in the following chapter.

CHAPTER XXI

THE LEGAL RELATIONSHIP OF THE CITY TO THE STATE.

In order to get as clear an idea as possible of the relationship which the cities of Oklahoma bear to the state it may be well to summarize the ordinary position of an American city in this respect. A city is a municipal corporation, created by the state under its reserved rights of sovereignty for the purpose of carrying out certain state activities and also for meeting certain local needs. Like any other corporation, it derives all its powers from the state and is a body of enumerated, rather than general powers. Consequently, it is entirely subordinate in all of its activities to the state, for which it acts only as an agent. Since this is so, in the absence of constitutional provisions, it is under the complete control of the legislature¹. The legislature may enlarge or diminish its area, may determine what system of government it shall have, may determine the method to be followed in organizing this government, may say what officers it shall have, how they shall be elected, what their functions may be, and may determine the sphere of activity of the city and impose such restrictions upon it as it sees fit.

Upon this supremacy there are two important classes of limitations. The first of these is found in the limitations which are placed upon the state and consequently upon its legislature by the national constitution. It is not necessary for the purpose of this chapter, however, to discuss these limitations. The second, and by far the

¹Dillion, *Municipal Corporations*, Sec. 98 (5th. Ed.): McBain, *The Law and Practice of Municipal Home Rule*, pp. 12-17.

most important class of limitations upon the control of the legislature over cities, is found in the state constitutions themselves. Through the limitations placed upon the legislature by the Oklahoma constitution, the ordinary relationship existing between the city and the state is profoundly changed.

The first of these limitations is found in a provision of the constitution which prohibits the legislature from establishing cities by special acts and requires that it "provide for the incorporation and organization of cities and towns and the classification of the same in proportion to population * * *"² The legislature is further limited even in respect to the organization and classification of cities through general laws, by the constitutional provisions which we shall discuss in detail later, granting the right of home rule to cities of more than two thousand population.

The constitution guarantees the right of the initiative and referendum to the people of every municipal corporation with reference to all legislative authority which it may exercise and to all amendments which it may wish to make to the charter³.

By Sec. 6 of Art. XVII of the constitution, the power of the legislature to prevent cities from engaging in the ownership and operation of public utilities is taken away by implication. This section provides that any municipal corporation in the state has the right to engage in "any business or enterprise which may be engaged in by a person, firm or corporation by virtue of a franchise from said corporation."

The legislature is prohibited from "granting the right to construct and operate a street railroad within any city,

²Art XVIII, Sec. 1. Const.

³Art. XVIII, Sec. 4a.

town, or village, or upon any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad⁴."

Several provisions limiting the financial control over cities by the legislature are found in the constitution. The legislature is forbidden to "impose taxes for the purpose of" any municipal corporation, but may by general laws confer on the proper authorities thereof the power to collect and assess taxes⁵. The provision of the constitution declaring that no city or town may levy over ten mills tax on an ad valorem basis except for public buildings acts indirectly as a limitation upon the legislature, since it cannot authorize a greater levy⁶.

The legislature except as provided for in the constitution, is prohibited from passing any local or special laws covering several classes of things. Among such prohibitions affecting cities and towns are the following:

Prohibiting the legislature from "authorizing the laying out, opening, altering, or maintaining of roads, highways, streets or alleys⁷."

"Vacating roads, town plats, streets or alleys⁸."

"Incorporating cities, towns or villages, or changing the charters⁹."

"Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts¹⁰."

The legislature is further prohibited from extinguish-

⁴Art. IX, Sec. 10, Const.

⁵Art. X, Sec. 20, Const.

⁶Art. X, Sec. 9-10, Const.

⁷Art. V., Sec. 46, Const.

⁸Ibid.

⁹Ibid.

¹⁰Ibid.

ing or releasing "in whole or in part, the indebtedness, liabilities, or obligations of any corporation or individual, to this State, or any county or other municipal corporation thereof".

By far the most important limitation upon the legislature in respect to cities is found in the so-called "Home-Rule" provision of the constitution. This provides as follows:

"Art. XVIII. Sec. 3 (a) Charters. Any city containing a population of more than two thousand inhabitants may frame a charter for its own government consistent with and subject to the Constitution and laws of this State, by causing a board of freeholders composed of two from each ward, who shall be qualified electors of said city, to be elected by the qualified electors of said city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board or a majority of them, and returned, one copy of said charter to the chief executive officer of such city, and the other to the Register of Deeds of the county in which said city shall be situated. Such proposed charter shall then be published in one or more newspapers published and of general circulation within said city, for at least twenty-one days, if in a daily paper, or in three consecutive issues, if in a weekly paper, and the first publication shall be made within twenty days after the completion of the charter; and within thirty days, and not earlier than twenty days after such publication, it shall be submitted to the qualified electors of said city at a general or special election, and if a majority of such qualified electors voting thereon shall ratify the same, it shall thereafter be submitted to the Governor

¹¹Art. V., Sec. 53, Const.

for his approval, and the Governor shall approve the same if it shall not be in conflict with the Constitution and laws of this State. Upon such approval it shall become the organic law of such city and supersede any existing charter and all amendments thereof, and all ordinances inconsistent with it. A copy of such charter, certified by the chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them shall, after the approval of such charter by the Governor, be made in duplicate and deposited, one in the office of the Secretary of State, and the other, after being recorded in the office of said Register of Deeds, shall be deposited in the archives of the city; and thereafter all courts shall take judicial notice of said charter. The charter so ratified may be amended by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof (or by petition as hereinafter provided) at a general or special election, and ratified by a majority of the qualified electors voting thereon, and approved by the Governor as herein provided for the approval of the charter.

Sec. 3 (b) An election of such board of free-holders may be called at any time by the legislative authority of any such city, and such election shall be called by the chief executive officer of any such city within ten days after there shall have been filed with him a petition demanding the same, signed by a number of qualified electors residing within such city, equal to twenty-five per centum of the total number of votes cast at the next preceding general municipal election; and such election shall be held not later than thirty days after the call therefor. At such election a vote shall be taken upon the question of whether or not further proceedings toward adopting a

charter shall be had in pursuance to the call, and unless a majority of the qualified electors voting thereon shall vote to proceed further, no further proceeding shall be had, and all proceedings up to that time shall be of no effect."

This provision not only places great limitations upon the legislature, but also determines fundamentally the relations existing between the city and the state.

In the first place, it virtually divides the municipalities of the state into great groups, viz.: Those of under two thousand population, which do not have the right to frame their own charters; and those of over two thousand population, known as cities of the first class, which have such a right.

Over those cities which have exercised the right to frame their own charters the legislature has very much less control, as we shall see, than over smaller municipalities, or cities of the first class, which have not exercised this right. Over all except home rule cities, the legislature has complete control, subject only to the restrictions found in the constitution, most of which we have already enumerated.

Acting under the ordinary powers of a state legislature in the absence of constitutional limitations covering these points¹², the legislature can determine by general laws the organization, powers and liabilities of cities, can determine the powers of their officers, and in any other way not expressly prohibited by the constitution can provide for their government. It also has the power to classify them as it sees fit, giving different duties, powers, etc., to different classes¹³.

¹²Munro, W. B., *The Government of American Cities*, third edition, 1921, p. 53.

¹³Art. XVIII, Sec. 1, Const.

The position of the cities which have framed their own charters is very different. The control of the legislature over them is decidedly limited. Just how far the legislature may exercise control over them, however, cannot easily be determined. The clause in the constitution providing that the charter shall be "consistent with and subject to the constitution and laws of this State," lays down no rule for determining how far the city can go in providing for its own government without its charter's being inconsistent and in conflict with the state law.

The constitution does not, as in some states, California and Colorado for instance, enumerate, after the general grant of home rule, specific powers which the city may exercise. The result of this is that many questions have arisen not only concerning the competency of the city to perform certain functions but also concerning the competency of the city as opposed to the competency of the legislature. The first state legislature attempted in a measure to remedy this defect, after rewriting into the law the constitutional provisions regarding home rule, by declaring:

"When a charter for any city of this State shall have been framed, adopted and approved according to the provisions of this article, and any provisions of such charter shall be in conflict with any law or laws relating to cities in force at the time of the adoption and approval of such charter, the provisions of such charter shall prevail and be in full force, notwithstanding such conflict, and shall operate as a repeal or suspension of such state law or laws to the extent of such conflict; and such state law or laws shall not thereafter be operative in so far as they are in conflict with such charter; Provided, that such charter shall be consistent with and subject to the

¹⁴R. L. Okla. 1910. Sec. 539.

provisions of the Constitution, and not in conflict with the provisions of the Constitution, and laws relating to the exercise of the initiative and referendum, and other general laws of the State not relative to cities of the first class."

This legislative provision, however, only gave very partial interpretation to the uncertain requirements of the constitution, with the result that the problem of the relationship of a chartered city to the state has been thrown into the courts. In order to determine the competency of a home rule city in Oklahoma, therefore, it becomes necessary to review a great many court decisions dealing with the subject. In general, the courts have interpreted the constitution and the above-quoted statute to mean that whatever is of purely local concern the city has complete power to regulate by charter provisions. "It has been the uniform holding of the Court that city charters become the organic law of the municipality, and supersede the laws of the state in conflict therewith in so far as they attempt to regulate purely municipal matters¹⁵." Any matter, however, which concerns the state as a whole, is controlled by state law and cannot be controlled by charter provisions; or, to put it in another way, the home rule charter must be consistent with and subject to state laws generally applicable to the state as a whole, and which do not relate to purely local or municipal affairs.¹⁶

Such criteria are entirely too general to furnish any adequate understanding of the position of the home rule city in the state; and it will be necessary, therefore, to discuss what has been held in individual cases covering various aspects of the problem.

¹⁵Walton v. Donnelly, 1921; 201 Pac. 367.

¹⁶See Lackey v. State, Ex rel. Grant, 29 Okla. 255; 116 Pac. 913.

The scope of a home rule city's powers presents itself in two different connections. In its simplest form it is merely a question of whether or not a city may exercise certain powers and functions. More frequently, however, there is a question as to superiority or inferiority between a charter provision and a state law. As Dr. McBain puts it, "In this form the question is no longer merely as to the competence of the city. It concerns the competence of the city in relation to the competence of the state legislature. Whether the question of the scope of home rule powers is offered in one or the other of these forms depends usually upon whether the state legislature has or has not acted in respect to the subject-matter under consideration¹⁷." While theoretically, then, these two phases of the subject should be discussed separately, it is in practice difficult to separate them without rediscussing several cases in which both questions have been raised. Both these phases, therefore, will be discussed more or less together.

The questions which have arisen in Oklahoma up to the present time regarding the competency of home rule cities are:

1. Can a city control its own procedure in respect to adoption and amendment of its charter?
2. Can a city determine its own organization?
3. Can a city enact its own primary election laws?
4. Can a city control its own election system?
5. Are the initiative and referendum mandatory in cities having their own charters?
6. Has a city power to impose qualifications for municipal suffrage?
7. Can a city levy, assess and collect its own taxes?

¹⁷Municipal Home Rule, p. 670.

8. Does a state law control charter provisions in respect to the tax levy?

9. Does a state law control charter provisions in respect to issuance of bonds?

10. Has a city the right to provide for the sale of public property?

11. May a city organize its own court?

12. Does a city have the right to enforce municipal ordinances by fines and imprisonment?

13. Does a city have the right to acquire a public utility?

14. May a city regulate public utilities?

15. May a city determine upon its own educational system?

16. Does a state law control charter provisions in respect to health?

17. Does a state law control charter provisions in respect to highways and pavement?

18. Does a state law control the organization and control of fire departments?

19. Does a state law control municipal ordinances regarding weights and measures?

20. Does a state law control charter provisions in respect to the licensing of pool halls?

21. Does a state law control the hours and wages of laborers employed by the city?

We shall proceed to consider the court decisions upon these questions in the order in which they have been enumerated.

1. Can a city control its own procedure in respect to the adoption and amendment of its charter?

The constitution, although outlining in considerable detail the procedure to be followed in the adoption of a

charter, did not explicitly provide by whom a proposed charter should be submitted to the qualified electors of the city. It is also silent as to who should fix a date upon which the election for adoption or rejection of the charter should be held. In the case of *Reardon vs. Scales*¹⁸, a board of freeholders in Oklahoma City had enacted an election ordinance providing that the charter which they had framed should be submitted at a special election. It further provided that a primary election should be held for the nomination of officers under the charter at a date preceding the charter election. The court declared that the ordinance enacted by the board of freeholders was void; since the constitution provided that an election of freeholders might be called by the legislative authority of the city, it was clearly implied that the charter also should be submitted to the voters at an election determined upon by the legislative authority. That is, the court decided that the constitutional provisions as to the adoption of a city charter are self-executing in spite of the fact that a part of the procedure was omitted. This decision stands for the proposition, therefore, that a city cannot control its own procedure in the adoption of a charter. In the case of *Stearns vs. State, ex rel. Biggers*¹⁹ the court receded somewhat from its position in the *Rear-don* case, that the constitution is entirely self executing in regard to the framing of a city charter. In this case, which involved the question as to whether or not the council and mayor could be mandamusd to reconvene as a canvassing board, to recanvass the votes cast on the adoption of the new charter, it was pointed out that the constitution is manifestly silent as to recanvassing of votes in a contested election. No provision, furthermore, was to be found in the statutes of the state covering this sub-

¹⁸21 Okla. 683, 97 Pac. 584.

¹⁹23 Okla. 462, 100 Pac. 909.

ject. The court declared therefore that "If no other remedy exists by which it may be ascertained whether frauds are committed in the holding of this election, the legislative department of the state should be appealed to to provide such a remedy." Thus the court clearly implied that the state laws, rather than charter provisions, were to supplement the constitutional provisions pertaining to procedure for adopting charters and amendments thereto; or, to put it in another way, in case the constitution does not fully provide for the procedure necessary for adopting charters and amendments it is the state legislature which must supply this lack and not the city.

2. Can a city determine its own organization?

This question arose for the first time in the case of *Lackey vs. State, ex rel Grant*²⁰. In this case the question involved was whether or not existing statutes applicable to cities of the first class were to take precedence over freeholders, charters in respect to city organization. The statute in question (Wilson's Revised and Annotated Statutes 1903—Sec. 348-353) provided that the powers of cities of the first class should be exercised by a mayor and council, and that the council should be elected from wards. The freeholders' charter vested the power of the city in a commission of five members who were to be elected at large. After considerable interesting discussion, which we do not have space to give here, the court decided that what form of government a city should have was a matter of purely municipal concern. "It in no manner," the court said, "interferes with or infringes upon matters of the state at large, or affects its people generally; and, in the absence of such provision of the charter being in conflict with any provision of the constitution, it supersedes the statute." In the case of *Adler vs.*

²⁰29 Okla. 255, 116 Pac. 913.

Jenkins²¹, the court held that the regulation of the manner in which a municipal officer should be chosen was purely a local matter and that in consequence the provision in the Guthrie charter providing for the appointment of a city treasurer by the mayor supersedes a state law requiring that officer to be elected in cities of the first class. In *Bridgeman vs. Roberts*²², it was held that the city of Ardmore by an amendment to its charter could reduce the salary of the incumbent commissioners from \$600.00 per year to a stipend of \$2.00 per meeting, despite a state law which provided that "in no case shall the salary or emolument of any public official be changed after his election or appointment."

From the decisions cited above, it appears that the city is almost supreme in respect to its organization. A city, then, can determine for itself what form of government it will have, what officers it will have to carry out the government, what shall be their respective terms of office, the manner of selecting them, etc., without interference in any way by the state.

3. Can a city enact its own primary laws?

The constitution specifically provides that "The Legislature shall enact laws providing for a mandatory primary system, which shall provide for the nomination of all candidates in all elections for State, District, County and municipal officers, for all political parties, including United States senators * * *."²³ In the case of *Mitchell vs. Carter*²⁴ the court held that while the election of city officials was strictly a municipal affair and that where a thing was purely a municipal affair, charter provisions

²¹33 Okla. 117, 124 Pac. 29.

²²40 Okla. 195, 139 Pac. 518.

²³Art. III, Sec. 5, Const.

²⁴31 Okla. 592, 122 Pac. 691.

would supersede the general laws of the state, yet they did not supersede the provisions of the constitution. Since the constitution had expressly put the duty upon the legislature of providing for a mandatory primary system, the city had no power to enact a primary system for itself, but must follow the state law. The court held further that the people of a municipality in framing their own charter could not possibly come within the meaning of the term "legislature" as used in the above article of the constitution.

4. Can a city control its own election system?

In *Lackey vs. State ex rel. Grant*²⁵ and in *Mitchell vs. Carter*, cited above, the courts have definitely held that the provisions of the city charter governing elections other than primary elections supersede state law upon the subject. In the case of *Watts, Mayor, vs. State ex rel. Scott*²⁶ it was held that in the manner of voting municipal bonds the provisions of a city charter prevail over the general election laws of the state.

5. Are the initiative and referendum mandatory in cities having their own charters?

The home rule provisions of the Oklahoma constitution expressly provide for the exercise of the initiative and referendum in the amendment of freeholders' charters as well as in the enactment of municipal ordinances. Guthrie's home rule charter of 1911 failed to provide specifically for the use of the initiative and referendum as applied to charter amendments. The supreme court of the state had held that the general initiative and referendum provisions in the constitution were not self-executing, but that before they became effectual supplementary legislation would be required. In the supple-

²⁵29 Okla. 255, 116 Pac. 913.

²⁶187 Pac. 797.

mentary legislation provided by the legislature details as to the manner in which the initiative and referendum powers might be exercised in those cities that had failed to provide for the exercise of such powers by their own charters were laid down. In the case of *Lowther vs. Nissley*²⁷ the question was presented as to whether this statute did or did not apply to the home rule city of Guthrie. The court held that the statute did apply and that the Guthrie charter, which contained no provision upon this subject, might be amended by initiative and referendum procedure, taken under the provisions of the constitution as supplemented by a general state law.

In the absence, therefore, of charter provisions for carrying out constitutional mandates relating to the city, state laws will govern.

6. Has a city power to impose qualifications for municipal suffrage?

Several municipal charters of the state require qualifications in addition to those prescribed by the state constitution or state law for voting upon local bond issues and other municipal questions. No voter who has not these additional qualifications may participate in elections of this kind.

In many states where city charters are granted by the legislature such charters provide for qualifications in addition to those required by the constitution, as a prerequisite to voting on certain municipal questions²⁸. The rule is also well established that the legislature is competent to write such provisions, on the ground that it is only restricted by the constitutional qualifications for suffrage, in elections for which the constitution itself makes provision. Does this mean that the legislative

²⁷38 Okla. 797; 135 Pac. 3.

²⁸Cf. McBain, *Municipal Home Rule*, p. 582

authority of the city is in the same position as the state legislature in respect to these added qualifications? This point does not seem to have been decided in the courts of Oklahoma. Another question which arises in this connection is: If the city is empowered to restrict the suffrage, does it likewise have power to extend it? Such a result would seem to be logical, in view of the fact that in Oklahoma municipal elections have been declared to be matters of purely municipal concern.

7. Can a city levy, assess, and collect its own taxes?

In *Collinsville vs. Ward*²⁹, and *Rogers, County Treasurer, vs. Bass & Harbour Co.*,³⁰ It was held that a city could levy and collect taxes for a *purely municipal purpose*, but that the state law governed all other taxes. In these cases as well as in *Thurston, County Treasurer vs. Caldwell*³¹, a distinction was made between taxes for functions in which the state has a sovereign interest, "such as taxation for police protection, for streets, highways and bridges, for the purposes of establishing and maintaining a public school system * * *" and taxes for a purpose in which the state has no sovereign interest. The city, said the court, could only by charter provisions impose taxes for the purpose of carrying out the latter functions.

In the case of *Bodine vs. Oklahoma City*³² the city was declared to be possessed of much wider power over taxation than these previous decisions would seem to indicate. In this case the charter of Oklahoma City provided that the board of commissioners should prepare a budget and should base the annual tax levy thereon. The board

²⁹165 Pac. 1145.

³⁰168 Pac. 212.

³¹40 Okla. 206, 137 Pac. 683.

³²79 Okla. 106, 187 Pac. 209.

of commissioners was then by ordinance to levy an ad valorem tax for all purposes. The levy of any additional tax was also to be made by the city commissioners. The various levies were then to be certified by the city clerk to the county clerk of Oklahoma County, who was in turn to place them on the tax roll for collection by the county treasurer.³³

The general state law³⁴ provides that all municipal budget estimates shall be submitted to the county excise board. This board has the power "to revise and correct any estimates certified to them by either striking items therefrom, increasing or decreasing the items thereof, or adding items thereto, when in its opinion the needs of the municipalities shall require." The excise board, having then determined finally what the expenditure shall be, makes the levy. The secretary of the excise board is then to certify the appropriation so made to the issuing officer of the municipality. The several items of the estimate as made and approved by the excise board constitute definite appropriations.

Here was manifestly a conflict between the charter provisions and the state law. The court, after quoting section 539 of the Revised Statutes of 1910, quoted the interpretation of this section given by the court in *Lackey v. State*, "It is clear that the foregoing statute intends to provide that whenever a freeholders' charter has been adopted under the provisions of the constitution, and conflicts with any law of the state relating to municipal matters of cities of the first class, the provisions of such charter shall prevail." The court then declared that all the items within the budget

²³Charter of Oklahoma City, Art. 7, Secs. 1-10.

³⁴R. L. Okla. 1910, Sec. 7378, as amended by S. L. 1917, Ch. 226, Sec. 5.

were for the purpose of carrying out municipal government, and added, "We do not believe that a proper interpretation of the Constitution or of Section 539 will justify a finding that a city is limited in its taxing power while acting under a charter in which its terms authorize the raising of revenue by ad valorem taxation, for *purely municipal purposes*, whatever that may mean, but may include in its charter the power to raise by taxation revenue for *all legitimate purposes of municipal government*, subject to the Constitution and laws of the state." The courts limited this broad statement slightly by adding, "We do not mean to say that the Legislature cannot regulate and control the manner and method of raising revenues by a city acting under a charter in all matters in which the state has a sovereign interest, but will say that it has not as yet done so* * * And furthermore, we do not mean to say that the general laws of the state will not authorize the imposition of a tax for municipal purposes in which the state has a sovereign interest should a city, when its charter authorizes it, fail to impose such a tax."

What the court practically does here is to eliminate the distinction formerly made between those functions in which the state has a sovereign interest and those which are purely local. In fact, the court says: "The opinions in *Rogers, Treas., v. Bass & Harbour* * * * and the *City of Collinsville v. Ward* * * * in so far as they may hold that a city operating under a charter form of government can only levy *for purely municipal purposes*, are expressly overruled."

This decision is so inconsistent in several places that it is almost impossible to determine what the court means. If the court simply intends to say that the making of a budget is purely a municipal affair over which the state should exercise no control, or is an affair, in other words,

which should be governed by charter provisions rather than state law, we can agree with the decision of the court. From the language used, however, the court evidently means much more than this. According to the court, the city is free from control by the state in respect to "all legitimate purposes of municipal government." This interpretation of the relationship of the city to the state, of course, would give the city a much wider sphere of self determination than it would have in case it was only free from state interference for "purely municipal purposes," the criterion usually laid down. Practically everything that the city does might be considered a "legitimate purpose of municipal government." In fact, it is virtually impossible to make a distinction between a "legitimate purpose of municipal government" and a function in which the state has a "sovereign interest." Are not education, health, sanitation, taxation, highway construction and maintenance, public utility regulation, in fact, all those functions in which the state has formerly been held to have a "sovereign interest," embraced within the wide category of "legitimate purposes of municipal government"? If this doctrine were applied consistently it would revolutionize the relationship that home rule cities bear to the state. The city would become an independent principality within the state, subject to practically no control.

What the court means to say by the statement that the legislature has not regulated and controlled "the manner and method of raising revenues by a city acting under a charter in all matters in which the State has a sovereign interest" is a little hard to determine, for the state certainly has many laws governing finance which control the city; as, for instance, who shall assess property, who shall collect taxes, what property shall be taxed, the tax-

ation of public utilities, etc. If this decision were carried to its logical conclusion the city would have a right to control all such matters. Certainly this is the farthest that the court has ever gone in freeing the city from legislative control in respect to finances. If the court had asked itself the following questions, perhaps its decision would not have been so sweeping: Can the city classify property for purposes of taxation; may the city provide for the assessment of all property within the city by a city assessor instead of the county assessor; could the city require a city treasurer instead of the county treasurer to collect taxes?

8. Does a state law control charter provisions in respect to the amount of the millage tax levy?

The state constitution places a limitation of ten mills upon the rate of tax that a city may levy for current expenses.³⁵ State law, supplementing the constitution, fixes the limit at six mills upon the dollar of assessed valuation for current expenses, permitting, however, additional taxation for sinking funds and judgments.³⁶ Many of the cities of the state, through charter provisions,³⁷ have either prescribed a rate of levy slightly beyond this, or else have permitted a levy up to the constitutional limit of ten mills. It is a remarkable fact that the question whether or not such charter provisions supersede the state law has never been brought before the courts. It would seem logical to presume, however, that the courts would decide in favor of the city in such a case, since a levy up

³⁵Const., Art. X, Sec. 9.

³⁶Bunn Supp. 1918, Sec. 7376.

³⁷See for example Enid Charter of 1909, Art. V, Sec. 1; Ada Charter Art. V, Sec. 1; Muskogee Charter, Art. VII, Par. 97; Tulsa Charter, Art. II, Revenue and Taxation Sec. 1; Collinsville Charter, Art. XIV, Sec. 1.

to the constitutional limit would seem to be a matter of purely local concern.

9. Does a state law control charter provisions in respect to the issuing of bonds?

In the case of *In re Bonds of City of Tulsa*,³⁸ the question arose as to whether it was necessary for the attorney general, acting as bond commissioner, to pass upon bonds issued under provisions of the home rule charter and not under any statute of the state. The court held that the phrase in the law that "no bond hereafter issued by any political or municipal subdivision of the State shall be valid without the certificate of said bond commissioner",³⁹ applied to cities having home rule charters as well as to all other cities. It was held, however, in the case of *the city of Lawton v. West*,⁴⁰ that the provisions of this law do not apply where street improvements are to be paid for by special assessment. The reason for this holding is probably the fact that, according to the pavement law of Oklahoma, only the abutting property is liable on paving bonds, the city being itself in no way liable.⁴¹

The general laws of Oklahoma contain a number of provisions regarding the issuance of bonds.⁴² In the case of *Watts, Mayor, vs. State ex rel. Scott*,⁴³ the question arose indirectly whether in respect to the issuance of bonds for public utilities to be owned and operated by the city, the general provisions of the state law govern, or the special provisions of the city charter. The court held in this case "That the issuance of these bonds for the purpose above set out was a matter of purely municipal concern, and

³⁸31 Okla. 648, 126 Pac. 555.

³⁹R. L. Okla. 1910, Sec. 378.

⁴⁰33 Okla. 395, 126 Pac. 574.

⁴¹R. L. Okla. 1910, Sec. 619.

⁴²R. L. Okla. 1910, Secs. 458, 561, 378. Bunn Supp. 1918 Sec. 375a.

⁴³77 Okla. 199, 187 Pac. 797.

therefore regulated by the city charter * * *'' This case is not at all satisfactory upon this subject, however, as the decision is based upon reasoning which does not deal directly with the real question involved. The court, deeming it necessary in arriving at a decision to settle the question whether or not any charter provisions, either general or special, governing the issuance of bonds, would take precedence of a state law, decided that they would do so. Probably the court would not go so far as to say that the charter provisions could take precedence over the state law in respect to the passing upon of bonds by the attorney general.

Let us summarize, then, the relation of the city to the state in respect to the issuance of municipal bonds. Where bonds are issued for a purely municipal undertaking, charter provisions of the city will take precedence as to procedure, at least. Charter provisions, however, will not take precedence over the general state law requiring bonds to be approved by the attorney general, unless the city is in no way responsible for the payment of these bonds, as in the case of paving bonds.

10. Has a city the right to provide for the sale of public property?

In *Owen vs. the City of Tulsa*⁴²⁷ it was urged that power to voluntarily alienate property devoted to a public use could not be conferred upon a city by virtue of its home rule charter. The Tulsa charter had expressly given such power to the board of city commissioners. The court held, however, in this case, that the acquisition and the alienation of property was purely a municipal affair. In other words, even though no power to alienate property had been conferred by statute, it was nevertheless embraced within the scope of the city's authority granted to

⁴²⁷ Okla. 264, 111 Pac. 320.

it by the constitution. The doctrine in this case was followed in the case of *Sharp vs. City of Guthrie*,⁴⁵ which involved a similar question.

11. May a city organize its own courts?

Art. VII, Sec. 1 of the constitution provides that, "The judicial power of this State shall be vested in the Senate, sitting as a court of impeachment, a supreme court, district courts, county courts, courts of justice of the peace, municipal courts, and such other courts, commissions, or boards inferior to the supreme court, as may be established by law." The constitution itself organizes all of these courts to a certain extent, with the exception of the municipal courts, and defines their jurisdiction. The organization of municipal courts and the definition of their jurisdiction are evidently left to either the legislature or the city; or perhaps to both. Most of the cities which have adopted their own charters have provided for their own courts for trying offenses against municipal ordinances. It never seems to have been questioned, however, that the legislature could substitute its own system of courts in cities or determine the jurisdiction of municipal courts already established by a city. As we shall see in the following pages, this has been done on several occasions. In other states having home rule this power of home rule cities to establish police courts has sometimes been upheld,⁴⁶ but generally denied.⁴⁷ Even where this power has been upheld, the state law will supersede a charter pro-

⁴⁵49 Okla. 213, 152 Pac. 403.

⁴⁶Mo. *Ex parte Kiburg*, 10 Mo. App. 442, *Kansas City v. Neal*, 49 Mo. App. 72. In spite of the fact that the legislature established juvenile courts in St. Louis and Kansas City, its action was upheld. *Ex parte Loving*, 178 Mo. 194.

⁴⁷California, See *McBain*, Op. Cit., 206, 207, 214, 217. Minnesota, *Ibid*, 490-492; Texas *Ibid*. 654.

vision in this matter.⁴⁸

12. Is the regulation of matters pertaining to prosecution for the violation of municipal charters and ordinances a municipal affair?

The home rule cities of the state undoubtedly organized their own courts and enforced their ordinances involving both civil and criminal matters much as they wished, free from state interference, until 1915. In this year a statute was passed⁴⁹ which, together with amendments, court decisions and other statutes providing for the organization of municipal courts for cities of various classes, has pretty effectively placed the cities under state control.

The first leading case involving the relationship of the state to the city in respect to this question was decided in 1911. In this case⁵⁰ J. H. Simmons petitioned for a writ of habeas corpus in the criminal court of appeals on the ground that the municipal court of the city of Tulsa had no jurisdiction to try and to imprison him for violation of a municipal ordinance forbidding all persons to have possession of intoxicating liquors for the purpose of selling them. He based his contention on the ground that the ordinance was void, because the acts alleged to have constituted the offense were made public offenses under the statutes and the constitution of Oklahoma, and, further, because exclusive jurisdiction to try such offenses is conferred on the county court.

The city of Tulsa, which passed the ordinance in question, was operating under a charter form of government. The question was squarely presented, then, as to whether

⁴⁸In the absence of state law, the establishment of such courts is within the competence of the city in Missouri. This is a "subject upon which a state law will supersede a contrary charter provision." McBain, *Municipal Home Rule*, p. 197.

⁴⁹S. L. Okla. 1915 Ch. 147.

⁵⁰In re Simmons, 4 Okla. Cr. 662, 112 Pac. 951.

such a city can pass ordinances making an offense committed by a person a crime against the city when it is already a crime against the state.

The court held that the ordinance was valid, on the ground that there were really two offenses committed, one against the state and one against the city. The city had no power to enact ordinances punishing offenders against the general laws of the state. It did, however, have power to enact ordinances punishing offenses against the city. The court granted that under its general grant of powers the city has no right to punish for offenses provided for by the general laws of the state. It held, however, that such limitations did not apply to cities organized under a charter formulated and adopted under the constitutional grant by the citizens of a municipality. "And, when a city formulates and adopts a charter under the constitutional provision, the municipal corporation as organized may be considered a separate government, invested with full power of local legislation under its charter, the same being the organic law of the corporation." The court quotes with approval McQuillin, *Municipal Ordinances*, par. 433: "The police regulations of municipal corporations are usually enforced by ordinance. What police powers the local corporation may exercise, and the manner in which they are to be enforced, will depend upon its charter or legislative acts applicable, and the general policy of the state with respect thereto. Generally, cities may make and enforce within their limits all such local police, sanitary and other regulations designed to promote the health, safety, comfort, convenience and welfare of the local community which are not in conflict with the constitution or the general laws. Crowded urban populations require numerous police regulations which would be unreasonable in rural districts or sparsely populated

territory. This difference was quickly recognized, and from the first establishment of local corporations, invested with civil government, the local community has been empowered to enact and enforce all sorts of such regulations which restrict more or less the liberty of the individual, his personal movements and the use of his property. These are absolutely essential to life in crowded centers. From the beginning their necessity has been sanctioned by the public authorities and they have been sustained generally by the courts. The police power primarily inheres in the state; but if the state constitution does not forbid, the legislature may delegate a part of such power to the municipal corporations of the state, either in express terms or by implication."

Following this and other reasoning which is not particularly significant for our purpose, the court held: "The provisions of the charter of the city of Tulsa are broad enough to, and do, include the power to prohibit by ordinance the possession of intoxicating liquors within the confines of the corporation for the purpose of sale, barter, giving away and otherwise furnishing contrary to law—also power to enforce the punishment prescribed for violations thereof."

The next important question raised in the Simmons case is whether or not municipal courts, which operate without juries, can try offenses essentially criminal in nature under the general laws of the state. The counsel for the petitioner contended that he was entitled to a jury trial, arguing that the right of appeal to a court in which a jury trial may be had, does not meet the requirements of the constitution, that, "The right of trial by jury shall be and remain inviolate"⁵¹; and, "In all criminal prosecutions the accused shall have the right to a speedy and pub-

⁵¹Art. II, Sec. 19, Const.

lic trial by an impartial jury of the county in which the crime shall have been committed.”⁵²

Judge Doyle, who rendered the decision in this case, held that a jury trial, in the first instance, is not necessary in prosecutions for violations of municipal ordinances “enacted under the police power for the preservation of peace, good order, safety and health and otherwise promoting the general welfare within cities.” The court seemingly based its holding on several grounds:

1. Summary proceedings are justifiable for violations of municipal ordinances, where such violations are not embraced in the general criminal legislation of the state. Since this was not a violation of statelaw, but of municipal law, summary trial was justifiable.

2. Jury trial was only guaranteed and preserved in respect to those classes of cases in which it existed at the time of the adoption of the state constitution. The constitution “does not extend the right of trial by jury; it simply secures it in all cases in which it was a matter of right before.” Section 20 of the bill of rights simply “secures to the accused in all *criminal* prosecutions the right of trial by a jury of the county.” While it is true that a prosecution for a violation of a municipal ordinance which prohibits an act which also constitutes an offense under the general criminal law is a quasi-criminal proceeding, at the time of the adoption of the constitution it was, by law, triable in a summary manner. Section 746 of Snyder’s Statutes, which were copied from the statutes of 1893, provided: “In all cases before the police judge arising under the ordinances of the city, an appeal may be taken by the defendant to the district court, but no such appeal shall be allowed unless the defendant, within ten days, shall enter into a recognizance with good and suffi-

⁵²Art. II, Sec. 20, Const.

cient sureties, to be approved by the police judge, conditioned for the personal appearance of the appellant before the district court of the county on the first day of the next term thereof."

3. The right of jury trial upon appeal from the municipal court of the city is free from unreasonable restrictions and so the constitutional guarantee of trial by jury has not been impaired.

It was contended by the petitioner that since the case was prosecuted in the name of the city of Tulsa, it was in violation of Sec. XIX, Art. 7, of the constitution, which provides, "The style of all writs and processes shall be 'The State of Oklahoma.' All prosecutions shall be carried on in the name and by the authority of the State of Oklahoma." The city charter of Tulsa provided, "All writs, subpoenas, or other process issuing out of the city court shall run in the name of the City of Tulsa, and may be executed and served by the chief of police or his deputies, or policemen of said city anywhere in Tulsa County, Oklahoma." The court held that this constitutional provision did not extend to city ordinances, and that the provision of the city charter was not in conflict with the constitutional provision. Upon a rehearing,⁵³ this decision was affirmed. The decision in the Simmons case in respect to the power of a city to pass such ordinances was also affirmed in the case of Oklahoma City v. Spence.⁵⁴

In 1915⁵⁵ the legislature passed an act which, after defining a municipal court, expressly declared proceedings against the violation of municipal ordinances "criminal in their nature;" and provided that, subject to certain speci-

⁵³Ex parte Simmons, 5 Ok. Cr. 399, 115 Pac. 380.

⁵⁴8 Okla. Cr. 121, 126 Pac. 701.

⁵⁵S. L. 1915, Ch. 147.

fic exceptions, they are to be "governed by and subject to general laws regulating criminal procedure." Under this act the city was allowed to try cases summarily, but an appeal lay to the county court.

The effect of this act is seen in the decision of *Ex Parte Johnson*,⁵⁶ which was rendered in January, 1917. In this case the court held that a person prosecuted under a city ordinance for an offense which is also made a misdemeanor by statute, or ordinance, the punishment for a violation of which is or may be imprisonment, is entitled to jury trial, in the court of original jurisdiction; and that to accord to the accused the right to be tried by a jury in the county court on appeal, after conviction in the municipal court, does not satisfy the requirements of the constitution in respect to jury trial, nor is it due process of law. Further than this, it is beyond the power of the legislature to abrogate or abridge the right of jury trial in criminal cases; and also beyond their power to confer jurisdiction on any tribunal to try criminal cases without providing for a jury trial in the court having original jurisdiction.

The court further held that the constitutional guarantees in respect to jury trial cannot be evaded by the nature of the powers vested in the municipality under its charter, or by the nature of the jurisdiction conferred upon the municipal courts.

The Johnson decision has been followed in a number of similar cases involving the various cities of the state.⁵⁷

⁵⁶13 Okla. Cr. 30; 161 Pac. 1097.

⁵⁷*Ex parte Monroe*, 13 Okla. Cr. 62, 162 Pac. 233; *Ex parte Doza*, 13 Okla. Cr. 287, 164 Pac. 130; *Ex parte Gownlock*, 13 Okla. Cr. 293, 164 Pac. 130; *Franks v. City of Muskogee*, 14 Okla. Cr. 391, 171 Pac. 492; *City of Blackwell v. Burgett*, 14 Okla. Cr. 682, 166 Pac. 442; *Millar v. State*, 191 Pac. 1119; *Ex parte King*, 161 Pac. 1102.

It was undoubtedly the 1915 law defining municipal courts "to mean and include all the courts of the state of Oklahoma, organized and existing in the various towns and cities thereof, which shall have and possess, under the laws of the state, original jurisdiction to hear and determine offenses against the ordinances of municipalities" and requiring them to be "governed by, and subject to, general laws relating to criminal procedure," that made the court reverse the opinion which it rendered in the Simmons case. In fact, in the case of *Ex Parte Monroe*¹³ Judge Brett, speaking for the court, says, "And, as has been said, 'all that is required' to solve the problem that has seemed to disturb some of our cities since the Tom J. Johnson opinion was announced, 'is that offenses against the ordinances be reduced from crimes to the place they formerly occupied, and the place contemplated by our legal system.' "

Almost immediately following the Johnson decision the legislature amended Sec. 1 of Chap. 147 of the laws of 1915, which provides that "Such proceedings are hereby declared criminal in their nature; and except as otherwise specifically provided, shall be governed by, and subject to, general laws relating to criminal procedure:" by an act providing "that in the trial of all cases in said municipal court where the offense as defined by the city ordinance is punishable by a fine only, the defendant shall be tried without a jury, but in all cases where the defendant is charged with violation of a city ordinance, and where said offense may be punishable by imprisonment, the defendant shall be entitled to a trial by a jury in the justice of the peace court within said city, or in the county court of said county, as the case may be." This

¹³13 Okla. Cr. 62, 162 Pac. 233.

jury is drawn and selected in the justice court in the same manner as provided by law for juries in the justice of the peace courts.⁵⁹ The act was entitled "An act amending * * * Chapter 147 of the session laws of Oklahoma, 1915, entitled: 'An act to regulate appeals from judgments of municipal courts, etc'."

The court has held⁶⁰ that "While this amendatory section does not in specific terms state that a violation of a city ordinance is criminal in nature, the declaration that 'Where the offense may be punished by imprisonment the defendant shall be entitled to a trial by jury' indicates that such action is criminal in its nature." The court says further, "Taking into consideration the provisions of the Code of Criminal Procedure, together with the Constitution and statutory enactments relating to municipal courts, we cannot conceive how any action where an accused will or might be subjected to imprisonment on any charge amounting to more than a petit offense can be anything but a criminal action."

In this case, as in others, the courts have laid down the rule that "the test as to whether or not the accused is entitled to a jury trial is whether or not the punishment will or might be imprisonment, or a fine and costs in excess of \$20, for the non-payment of which the accused may be imprisoned." It is a little difficult to follow the reasoning of the court here, particularly since it claims that the "dividing line between mere petit offenses that could be tried summarily without a jury and the graver offenses of a criminal character, where the accused is entitled to a

⁵⁹S. L. 1917, Ch. 127.

⁶⁰Ex parte Johnson, 1921, 201 Pac. 533.

⁶¹Ibid. See also Ex parte Bochmann, 201 Pac. 537.

jury," has been fixed at a penalty of \$20, including costs, in part by the federal constitution.⁶²

In the case of *Ex Parte Daugherty et al*, the court has recently held⁶³ that section 1 of chap. 147 of the session laws of 1915 as amended by the session laws of 1917, above cited, providing for the trial of municipal offenses before a justice of the peace or the county court, is inoperative as being in conflict with Sec. 57, Art. V of the constitution, providing that every act shall embrace but one subject, which shall be clearly expressed by the title.

In this case the warrant for the arrest of the defendants was made by the municipal police court, before which they appeared and pleaded not guilty. They thereupon demanded a trial by jury and their cause was remanded to the justice court, where they were tried by a jury of six men and found guilty, and a fine of \$100 each and costs was assessed against them. Upon failure to pay the fine they were incarcerated in the city jail. They then sued out a writ of habeas corpus upon several grounds, the main ones for our purpose being that the subject matter treated in the act is foreign to and not germane to the title of the act, that neither by its terms nor by implication is original or concurrent jurisdiction of municipal offenses conferred upon the justice of the peace court or the county court, and that "if it was the intent of the legislature, by the passage of this amendment, to provide a method of taking a change of venue or transfer of the cause from the municipal court to a justice of the peace court or the county court, the statute is ineffectual for that purpose, because it provides no method of authenticating and transferring the record from one court to another and that it does not operate to modify or enlarge

⁶²*Ex parte Johnson*, 201 Pac. 533.

⁶³204 Pac. 937.

the jurisdiction of either court." The court upheld the defendants in all these contentions.

Upon the first point the court held that by no process of reasoning could the first section of the act be considered germane to the title.

In respect to the second point the court said: "The language of the act indicates that it was the purpose of the legislature that in all cases where the accused could be tried summarily without a jury the action should be commenced and prosecuted to final judgment before a justice of the peace or county court. The language of the amendment does not justify the conclusion that there was an attempt made here to authorize a change of venue from one court to another. If there was, we think it was an abortive attempt. There is no method provided for authenticating the record and conveying it to the justice or county court, as a basis for jurisdiction. Ordinarily, changes of venue are taken from one court or district to another having concurrent jurisdiction. The jurisdiction of these magistrates is in no sense concurrent. In cities having special charters, a justice of the peace or the county court is not primarily charged with or responsible for the enforcement of municipal regulations. Both are officers of different subdivisions of the state government."

Another difficulty with this act, according to the court, is the fact that jurisdiction of a justice of the peace court is predicated upon a verified complaint and a warrant issued by the justice. The appearance of the defendants in the justice court was not in pursuance of original process issued out of the justice court but was in pursuance of the conditions of the bonds exacted by the police magistrate.

Briefly, the decision seems to rest upon the following argument: municipal courts do not have concurrent juris-

diction with justice of the peace courts and county courts; hence change of venue from the former to the latter is not a part of criminal procedure. An appeal from one court to the other might be due process of law, but the act in question plainly intends to provide not an appeal, but a different original jurisdiction for cases where the defendant is entitled to jury trial. Yet the title of the act, which was not altered by the amending act, is "An act to regulate appeals from judgments of municipal courts," etc. This fact alone makes Sec. 1 of the act inoperative as being in conflict with the constitutional provision above cited that the subject of each act shall be clearly expressed in its title. The act is defective in other ways, such as failure to provide for the transfer of records.⁶⁴

Three acts were passed by the legislature in 1919, which established under the guise of classification certain municipal courts. The first of these acts provided for municipal courts⁶⁵ in cities having a population of over 10,000, in counties having a population of between 43,000 and 47,000, as shown by the last preceding federal census or by any subsequent federal census. Since there is only one county in the state which answered this description according to the census reports of both 1910 and 1920, and only one city in that county having a population of over 10,000—Shawnee—this act applies only to that city.⁶⁶

This court was given coördinate jurisdiction in all civil cases of which the county court of such county would have jurisdiction, where the amount involved is not more than

⁶⁴Possibly the court overlooked Sec. 12 of the original act, which does provide for the transmission of records and documents from municipal courts to county courts.

⁶⁵S. L. 1919, Ch. 267.

⁶⁶Population of Pottawatomie County in 1910, 43,595. In 1920 its population was 46,028. Shawnee is the only city in the county having a population anywhere near 10,000.

\$500, exclusive of interest and costs; of actions to recover specific personal property located in the county where the value does not exceed \$500; and coördinate original jurisdiction with the county court and courts of justice of the peace in all misdemeanor cases, jurisdiction as examining and committing magistrates in felony cases, and jurisdiction of all civil and criminal cases and matters which would fall within the jurisdiction of the justice of the peace, as well as jurisdiction of actions of forcible entry and detainer. This court was further given exclusive and original jurisdiction to hear and determine all prosecutions for violations of city ordinances. Appeals lie to the district or superior court.

The second of these acts, again⁶⁷ under the guise of a classification of cities by population for judicial purposes, established a special court for the city of Muskogee. This court has similar jurisdiction to the Shawnee court in respect to enforcing state laws. Sec. 9 of this act provides that this court shall have exclusive jurisdiction over all violations of the ordinances of the city in which the court is located, subject to the right of the defendant to appeal. Jurors for these courts are selected from the county.

Chap. 199 of the laws of 1919 establishes municipal criminal courts in cities of between 50,000 and 80,000 population. This means that there is also a special court for the city of Tulsa, since she is the only city falling within these population limits. This court is a court of record and has original jurisdiction to hear and determine prosecutions in respect to violations of municipal ordinances. It also has coördinate jurisdiction with the county court and courts of justice of the peace, in all cases wherein a violation of state statute is charged, when

⁶⁷S L 1919, Ch. 157.

the offense was committed within the limits of the city. Jury trial is made possible in all cases, except those where a violation of a city ordinance is charged wherein the penalty does not exceed a fine of \$20. In case one charged with a crime does not demand a jury trial, the right is deemed to have been waived, and the trial is before the judge.

In summarizing the foregoing paragraphs, we may note that:

Three cities of the state have special courts established by the state legislature for the trial of offenders under municipal ordinances. All three of these courts provide for a jury trial in those cases where it has been established that this is necessary to due process of law, or in cases where the Oklahoma constitution makes jury trial obligatory.

What, then, is the position of the other cities of the state in respect to the enforcement of municipal ordinances involving fine and imprisonment?

While the decision in the Simmons case has not been overruled in respect to the power of the city to pass ordinances under its right of home rule, providing for the punishment of offenses also provided for by the general laws of the state, later decisions have decidedly limited this power.

It has been held that such ordinances can only run current with and never counter to state law. The municipality cannot provide for summary punishment for violations of its ordinances in any case where the fine exceeds twenty dollars, including costs; nor for any offense whose punishment is imprisonment. For all such offenses a jury trial is necessary. It is not enough that a free right of appeal from the municipal courts is provided; there must be a jury trial in the first instance. While the legislature

undoubtedly has the power to provide that offenses against city ordinances criminal in nature shall not be tried in municipal courts, but in justice of the peace courts or county courts, the law by which it attempted to do so is unconstitutional. The cities of the state, then, with the exception of Shawnee, Muskogee and Tulsa, have no machinery for enforcing any ordinance involving imprisonment, or a fine of over twenty dollars, including costs. While the cities have large police power and can pass ordinances involving fines and imprisonment, they are unable at the present time to enforce them. This leaves the cities in a rather helpless position in respect to the suppression of crime.

What is the way out of the present difficulty? While the court in the case of *Ex Parte Monroe* suggested that all that is necessary to give the cities the power that they formerly enjoyed is to repeal the law of 1915 defining "offense" and declaring prosecutions of offenses punishable by imprisonment to be "criminal in their nature", if one reads the decisions of the court with care one inclines toward the opinion that even with the repeal of this law, summary proceedings would be contrary to due process of law and contrary to the right of jury trial guaranteed by the constitution. If such is not the case, a mere repeal of this law would give the cities the power they formerly possessed. It is a nice question whether or not the decision in the *Daugherty* case above cited will be interpreted as placing cities in the same position that they occupied before the passage of the 1915 law.

Several arguments have been advanced both for and against permitting the city to impose rather severe fines and some little punishment for violations of municipal ordinances, and also to try cases summarily. We shall quote a few of these arguments.

"Particular acts may be far more injurious, while the temptation to commit them may be much greater, in a crowded city than in the state generally. They consequently require more severe measures for prevention. State laws are, of course, for the general good, and cannot always answer the peculiar wants of particular localities."⁶⁸

"Experience has taught that discipline could not be maintained in the army if the law should permit * * * spies, and other offenders to be tried by jury. It has also been demonstrated that when towns become cities, lives and property cannot be properly safeguarded without the enforcement of municipal ordinances in summary, or administrative proceedings. Congregated in cities are the most virulent enemies of society, in many instances maintaining organizations and confederations with alibis prepared and planned before offenses are committed. These characters become known, in a general way, to the police officers of the city, both by reputation and otherwise. There are often fifty cases, or more, of these offenders brought before the police court in one day, many of whose offenses are petty, tending more particularly to undermine and destroy society; a tendency which, if not strenuously suppressed, leads to robbery and murder, and renders cities unsafe and virtually uninhabitable * * * . The jury system has been found impracticable for the enforcement of ordinances against petty offenses in thickly populated centers."⁶⁹

In the case of *Ex Parte Johnson* above referred to, the other side of the controversy is presented fairly well. The court says: "If we needed evidence of the value of the right of trial by jury, we should find abundance of it in the record before us. A citizen is arrested without a warrant, is brought before the municipal court, is sum-

⁶⁸Wood v. City of Brooklyn, 14 Barb. 425.

⁶⁹Geo. A. Henshaw, Okla. Municipalities, Jan. 15, 1918.

marily convicted on hearsay testimony, and is given the maximum sentence, which in effect amounts to 6 months' penal servitude. He is poor, and by reason of his poverty he is unable to give an appeal bond; on the mittimus he is then by virtue of a contract between the city and the county placed in the custody of the overseer of the county chain gang to serve out the sentence imposed. The punishment imposed in its nature and character is the same as that imposed for crimes against the state. It cannot be that such punishment can be imposed in Oklahoma by the ipse dixit of a police judge. If the sentence can be for six months, it may be for twelve months if the legislature should permit it. Truly it is said that 'summary judgment is but judicial despotism.' "

It seems to the present writer that while summary trial may be objected to on the ground that it may give rise to abuses, yet it is necessary for the city to possess the power to try summarily if it is to protect the safety of its citizens. If an easy method of appeal to a higher court is provided, which involves only a small bond, it is hard to see that the accused has not had due process of law. It is a fact of legal history that municipalities have had the power to punish summarily or without a jury.⁷⁰ This power has also been upheld by the highest courts in some eighteen jurisdictions.⁷¹ If such power is definitely granted to the cities of Oklahoma, it might perhaps be desirable for the legislature to limit the fines which they might impose to seventy-five or one hundred dollars, and also to limit the jail sentence to sixty days or even less..

13. Does a city have the right to acquire a public utility? This right is expressly granted in the constitution. not

⁷⁰McInery v. City of Denver, 29 Pac. 516.

⁷¹Sec. 24 Cyc. 145.

only to home rule cities but to others also. Art. X, Sec. 27 of the constitution provides that "Any incorporated city or town in this State may, by a majority of the qualified property tax paying voters of such city or town, voting at an election to be held for that purpose, be allowed to become indebted in a larger amount than that specified in section twenty-six for the purpose of purchasing or constructing public utilities, or for repairing the same, to be owned exclusively by such city: Provided, That any such city or town incurring any such indebtedness requiring the assent of the voters as aforesaid, shall have the power to provide for, and, before or at the time of incurring such indebtedness, shall provide for the collection of an annual tax in addition to the other taxes provided for by this Constitution, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty-five years from the time of contracting the same."

The only limitation, therefore, which is placed upon the right of a city to acquire public utilities would seem to be the construction which the court gives to the term "public utility." So far the Oklahoma courts have been exceedingly liberal in interpreting these words. In the case of *Edwards v. Miller*⁷² holding that sewers are public utilities the court cited with approval *Valley City Salt Co. v. Brown*⁷³ in which it was held that the term "public utility" is synonymous with the term "public use." In *State ex rel. Manhattan Construction Co. v. Barnes*⁷⁴ it was held that a convention hall is a public utility. In a rather recent case⁷⁵ it was held that a cemetery is a public utility

⁷²21 Okla. 448, 96 Pac. 747.

⁷³7 W. Va. 191.

⁷⁴22 Okla. 191, 97 Pac. 997.

⁷⁵*Denton vs. City of Sulphur*, 78 Okla. 178, 189 Pac. 532.

within the meaning of Sec. 27, Art. X of the constitution, which empowers any incorporated municipality by a majority vote of the qualified property owners to become indebted for the purpose of constructing or purchasing a public utility. In addition to the above the following utilities have been declared to be public utilities: water-works,⁷⁶; sewers,⁷⁷; public parks, drive ways and sidewalks and pavements in streets surrounding walks⁷⁸; fire stations.⁷⁹

It was held in *Coleman vs. Frame*,⁸⁰ that street improvements are not public utilities within the meaning of the above constitutional provision, and in *Hooper v. State ex rel. Cline*,⁸¹ it was held that street and alley intersections cannot be considered as public utilities. In *Oklahoma City v. State ex rel. Edwards*,⁸² it was held that public fire stations and street cleaning equipment are embraced within the term "public utilities" as used in Art. X, Sec. 27 of the constitution.

14. May a city regulate public utilities operating wholly or partly within its boundaries?

The constitution, at least as interpreted by the courts, is exceedingly ambiguous on this point. One section dealing with municipal corporations provides: "No grant, extension, or renewal of any franchise or other use of the streets, alleys, or other public grounds or ways of any municipality, shall divest the State or any of its subordinate subdivisions, of their control and regulation

⁷⁶*Dunagan et al v. Town of Red Rock*, 58 Okla. 218; 153 Pac. 1170.

⁷⁷*State vs. Miller*, 21 Okla. 448; 96 Pac. 747.

⁷⁸*Barnes vs. Hill*, 23 Okla. 207; 99 Pac. 927.

⁷⁹*Oklahoma City vs. State*, 28 Okla. 780, 115 Pac. 1108.

⁸⁰26 Okla. 193; 109 Pac. 928.

⁸¹26 Okla. 646; 110 Pac. 912.

⁸²28 Okla. 780; 115 Pac. 1108.

of such use and enjoyment. Nor shall the power to regulate the charges for public services be surrendered; and no exclusive franchise shall ever be granted.”⁸³ The article dealing with the corporation commission provides, however, “That nothing in this section shall impair the rights which have heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county, to prescribe rules, regulations, or rates of charges to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town, or county so far as such services may be wholly within the limits of the city, town, or county granting the franchise.”⁸⁴

If the first section quoted were interpreted according to its evident meaning it would seem only to provide that power to regulate should never be granted away by virtue of any grant or franchise. In fact, it was so interpreted in the case of *Oklahoma Railway vs. Powell*,⁸⁵ in which the court said, “this is limitation (not a grant of power) and prevents the municipality from ever surrendering or contracting away such power when it may be granted to it by the sovereign power.” The fact that the section expressly provides that such grants or franchises shall not divest the state or any of its subordinate subdivisions of their control and regulation of such use and enjoyment, would seem to mean that the subdivisions as well as the state had power of regulation. These interpretations, however, have not been followed by the courts, as we shall see.

In the first case which came before the court involving the question whether or not a city might regulate pub-

⁸³Art. XVIII, Sec. 7, Const.

⁸⁴Art. IX, Sec. 18. Const.

⁸⁵33 Okla. 737, 127 Pac. 1080.

lic utilities, the court held it was the intention of the section "that the power to regulate the charges for public service by municipal corporations is a power which it was the intention of the framers of the constitution should be exercised by the sovereign power only * * *." In the absence of express delegation of such power the city had no right of regulation.⁸⁶

In the case of Pioneer Telephone and Telegraph Co. vs. State,⁸⁷ Oklahoma City, which has a home rule charter, had by franchise regulated the rates to be charged for telephones. The court refused to allow the city this power on the ground that such a right can only be derived from the legislature by an express grant or by necessary implication from power expressly granted. The grant to the city of a right to give a franchise does not give a city power to fix rates by franchise or otherwise.

The court followed nearly the same line of reasoning in the famous Pawhuska Oil & Gas Company case.⁸⁸ In this case the city of Pawhuska, acting under a statute⁸⁹ conferring upon cities of the first class the power to make contracts with public service corporations for furnishing gas or electric lights, and to regulate by ordinance the rates to be charged, granted a franchise for twenty-five years to the defendant company with the proviso that the rates charged should not exceed fifteen cents per thousand feet of gas. Subsequently, the state legislature passed an act⁹⁰ which provided that the state corporation commission should have general supervision over all

⁸⁶South McAlester-Eufaula Telephone Co. vs. State, ex rel Baker-Reidt Mercantile Co. 25 Okla. 524, 106 Pac. 962.

⁸⁷33 Okla. 724, 127 Pac. 1073.

⁸⁸Pawhuska vs. Pawhuska Oil & Gas Co. 64 Okla. 214. 166 Pac. 1058.

⁸⁹R. L. Okla. 1910, Sec. 593.

⁹⁰S. L. 1913, Chap. 93.

public utilities furnishing heat, light, water, and power, with power to fix and establish rates and prescribe rules, requirements and regulations affecting the service. Late in 1916, the Pawhuska Oil & Gas Company appealed to the corporation commission for an increase in rates. That body granted them an increase to twenty cents per thousand feet of gas. From the award the city appealed to the supreme court of the state. The court upheld the increase made by the corporation commission. While the court seemed to fully concede that the legislature by the 1910 statutes had delegated power to cities to regulate their own utilities, yet it held this delegation was only to endure until such time as the state saw fit to exercise its paramount authority; that under the constitution the legislature could withdraw that authority from the city whenever in its judgment the public interest required; and that it was effectively withdrawn by the act of 1913. This case stands for the proposition, then, that since in respect to rate making the legislature is supreme, it may delegate to cities the right to regulate the rates of public utilities operating within their boundaries, and may also take away such right at any time it sees fit.⁹¹

The next important case involving public utility regulation on behalf of cities is that of the City of Bartlesville vs. The Corporation Commission.⁹² In this instance the city charter itself provided for the exclusive regulation of certain classes of utilities by the city.⁹³ This case brought up the question definitely, whether or not a charter pro-

⁹¹See also *City of Durant vs. Consumers Light & Power Co.* —Okla. —, 177 Pac. 361.

⁹²82 Okla. 160, 199 Pac. 396.

⁹³“The City of Bartlesville shall have the power by ordinance to fix and regulate, from time to time, reasonable rates, fares, tolls and charges to be charged or exacted for public services by telephone, gas, electric light and street railway companies, and by any

vision granting to cities the right to regulate public utilities supersedes the state law on the subject. The court held flatly that it does not, saying, "The supreme Legislature of the state having seen fit to place the power of regulating rates for gas furnished by public utilities in the Corporation Commission, in our judgment the state has such a sovereign interest in this subject of legislation as to preclude the charter cities of the state from entering the field by charter provisions."

Let us summarize. In the South McAlester-Eufaula Telephone Company case, the city exercised the power of regulation without special state sanction and simply by virtue of the fact that the right of such regulation was contained in the franchise which it had granted to the company. In the Pioneer Telephone & Telegraph case the city, having a right to grant franchises, had regulated rates through this power. In the Pawhuska case the city had regulated by a franchise provision, but under the power of regulation delegated to it by the state. In the Bartlesville case the city charter itself granted the exclusive right of regulation to the city. From the decisions in these cases the position of the city in respect to the regulation of public utilities would seem to be: first, that the city has no inherent right to regulate public utilities; second, that the legislature can delegate such right to cities if it wishes to do so and also can take away this right when it sees fit; third, that the city cannot give itself such power by charter provision. In other words, the city is entirely under the power of the state legisla-

and all other persons or corporations operating under a grant, franchise, or license from the city; and to prescribe the quality of the service; and the value of any franchise conferred by this city shall not be considered in the computation of what shall be considered the reasonable rates for compensation." Charter, Art. 11, Sec. 6.

ture in respect to the regulation of public utilities, and franchise or charter provisions in conflict with the state law in this field of governmental activity are invalid.

Nor may a city prescribe rules and regulations governing public utility services. In the case of *Oklahoma Ry. Co. v. Powell et al*⁹⁴ Oklahoma City, acting under the powers conferred by its 1902 charter and before the right of home rule had been granted by the state constitution, had passed an ordinance granting a franchise to a street railway company and providing for the regulation of such company "with reference to the operation or maintenance of said street car system, etc." An act of the territorial legislature of 1903⁹⁵ granted corporations the right of constructing street railways upon "such terms and conditions as may be agreed upon between such corporations and such city or town." By its charter, later adopted under the home rule provision of the state constitution, the city also provided for the regulation of public utilities. Later on the state corporation commission passed rules and regulations in respect to hours of service, transfers, etc. conflicting with the regulations imposed by the city.

The court held that the regulations of the corporation commission were valid, saying: "In view of said rule of strict construction (referred to earlier in the case) of corporate powers being applicable to grants of power to municipal bodies which are out of the usual range, we must conclude that Oklahoma City under its charter, adopted by virtue of section 3a and 3b of Art. XVIII of the Constitution, without further authorization by the legislature, may not prescribe rules and regulations to be observed, and fix rates to be charged by the appellant in perform-

⁹⁴33 Okla. 737, 127 Pac. 1080.

⁹⁵S. L. p. 141.

ance of its duties toward the patronizing public as the public service corporation."

This decision is in line with decisions in respect to the regulation of rates of public service corporations, namely, that the legislature possesses the authority to grant municipalities power to regulate utilities, and that the city does not derive such powers from its constitutional right to frame a charter.

It is interesting to note that in but one of these cases was the provision regarding the right of cities to regulate utilities, found in the article dealing with the corporation commission, discussed. It may possibly be that the courts did not notice this important provision of the constitution, as it is found in a rather unexpected place, and is also obscured by being a proviso after a long section dealing with the power and authority of the corporation commission.

15. May a city determine upon its own educational system?

The charter of Ardmore, adopted in 1908, provided for the election of a board of education and for the organization, maintenance, and control of the city public school system in a manner directly in conflict with the general laws of the state, which establish independent school districts in cities of the first class, and regulate their organization and powers. The court held, in *Board of Education of Ardmore v. State ex rel. Best*⁹⁶ that the city had entirely exceeded its powers in trying in any way to regulate the school system, on the ground that: the public school system which the Legislature was directed to establish by Art. XIII of the constitution is a

⁹⁶26 Okla. 366, 109 Pac. 563. See also *State ex rel Friend*, 47 Okla. 44, 147 Pac. 161.

matter of state concern and is not in any sense a municipal affair. "The word 'system' itself imports a unity of purpose as well as an entirety of operation."

Shortly after this case was decided, the legislature passed an act permitting the charter cities to fix the number of members of their boards of education, their terms of office, the time and manner of their election, and to attach adjacent territory outside the city but within the school district to the appropriate voting precinct.⁹⁷

In the case of *Cottrel v. Baker*⁹⁸ the court held that this was not an unconstitutional delegation of legislative power "because the Legislature still reserves and exercises complete control over the public school 'system' throughout the state. This system is in harmony with the general policy of the state relative to municipal charters and the larger measure of self control guaranteed by our Legislature." (The court evidently meant constitution.) This law was objected to further on the ground that it permitted the city proper, by the adoption of a charter, to legislate for portions of the school districts lying outside the city limits. To this the court replied that to a certain extent this was a delegation to the municipality of power to legislate for persons not residing in the city, but that, "The school district is, of course, a separate entity from the city; but, while this is true, it is composed to property; and, while it may be true that a city cannot be to a very great extent, of the same people and of the same given the power to legislate for a county, or for the remainder of the state, whereas in this case the school district lines have been extended by consent of the city and of the persons residing in the attached property, we do not think that the power of the legislature to permit the

⁹⁷S. L. 1910, Ch. 113.

⁹⁸34 Okla. 533, 126 Pac. 211.

city to devise the manner of electing a school board should be destroyed, because it incidentally affects the property which has been attached by mutual consent, where, as in this case, those persons so attached are given full power of participation in the election of the members of the board of education."

An act of 1915⁹⁹ provided that the members of the board of education in cities of less than five thousand shall be nominated one from each ward, and one from the outlying territory, and elected by the qualified voters of the respective wards and outlying territory. There was no provision that cities operating under a charter form of government should be exempted from the operation of this act. In the case of *Searcy v. State*¹⁰⁰ the question arose as to whether this act applied to home rule cities. The court held that these provisions were applicable to both chartered and non-chartered cities of less than five thousand. This decision considerably limits the *Cotteral* decision in that the legislature itself can say what size of charter cities do or do not have the right to provide for the number, terms, etc., of the members of the boards of education. From this case and also from the *Cotteral* case, it may be deduced that the power of a home rule city in Oklahoma to control matters pertaining to public education must be had from the legislature and is not bestowed upon the city by the constitutional grant of home rule.

16. Does a state law control charter provisions in respect to health?

So far there have been no cases testing out this important question. Although the state law provides for the

⁹⁹S. L. 1915, Ch. 278, Sec. 3.

¹⁰⁰64 Okla. 257, 167 Pac. 476

organization of health authorities within cities,¹⁰¹ many home rule cities have by charter established their own boards of health and have prescribed their duties or else have provided that their governing authorities should do so. Some seem to have made no charter provisions at all governing health, evidently following the state law in respect to the organization of their health department.

17. Does a state law control charter provisions in respect to highways and pavement?

Article 7 of the Revised Laws of Okla.¹⁰² contains a complete statement of the procedure to be followed by the cities of the state in making street improvements. In the case of *Oliver vs. Pickett*¹⁰³ the question arose as to whether or not the provisions of the city charter regarding street improvements would take precedence over the general state law. In this case the city charter had adopted pavement proceedings that were prescribed by the law in force at the time the charter was established.¹⁰⁴ By the state's revised laws of 1910 the procedure was changed. The city commissioners proceeded to pave under the provisions of the old law as contained in the city charter. The question arose, therefore, whether the city charter provisions in respect to city paving took precedence over the general state laws. The court quoted *Burns vs. Linn*¹⁰⁵ to the effect that "it has been the uniform holding of the court that the provisions of a charter, adopted and approved in accordance with such constitutional and statutory provisions, become the organic law of such municipality and supersede the laws of the state in conflict therewith in so far as they attempt to regulate merely municipal matters." The

¹⁰¹R. L. Okla., 1910, Sec. 6794.

¹⁰²Sections 608 to 646.

¹⁰³79 Okla. 315, 193 Pac. 526.

¹⁰⁴Snyder's Compiled Laws of 1909, Sec. 722-733.

¹⁰⁵49 Okla. 526, 153 Pac. 826.

court, having decided that street paving was a purely municipal matter, held therefore that the provisions of the city charter would govern.

In *ex parte Shaw*¹⁰⁶ it was held that the state law regulating the registration of motor vehicles controlled local ordinances in conflict therewith. This case arose over the automobile tax, regarding which it will be remembered that the act made the state tax to be in lieu of all other taxes. It was held that the city, therefore, had no right to levy a tax. The court seemed to base its decision upon the ground that this act was an exercise of the police power of the state. The court says, "The act in question is not an attempt by the legislature to levy taxes for local purposes. Rather is it an exercise by the legislature of the police power of the state in the exaction of a registration fee or privilege tax in the nature of compensation for damage done the roads of the state by driving an automobile over them, the same to go to the support of the highways of the state, in which the state has a paramount interest." If such a tax is justified by the state under its police power as compensation to injury done state roads, it is a little hard to see why the city could not also levy a tax to compensate it for the damage done to its streets. A recent California decision¹⁰⁷ was based on the much wider ground that: "The streets of a city belong to the people of the state, and every citizen of the state has a right to the use thereof, subject to legislative control;" and that: "The right of control over street traffic is an exercise of a part of the sovereign power of the state. While it is true that the regulation of traffic upon a public street is of special in-

¹⁰⁶53 Okla. 654, 157 Pac. 900.

¹⁰⁷*Ex parte Daniels*, 192 Pac. 443.

terest to the people of a municipality, it does not follow that such regulation is a municipal affair * * *."

There have been no decisions in Oklahoma in respect to a conflict of city ordinances with state law regarding the speed of motor vehicles.

It was held in the case of *Ex parte Holt*¹⁰⁸ that the city has a right to pass ordinances regulating, as a police regulation, motor vehicles offered to the public for hire, and has a right to charge a license fee sufficient to cover the expenses of this regulation. However, where an ordinance purporting to be regulatory imposes a pecuniary charge excessively disproportionate to the cost of regulation, it constitutes a tax for revenue and is prohibited under the statute¹⁰⁹ regarding the licensing of motor vehicles by the state, which provides that municipal authorities shall have no power to pass any ordinance requiring from the owner of any motor vehicle any license fee for the use of highways, or to exclude from the highways any vehicle registered in accordance with the state law. Nor may a municipality impose a tax upon automobile owners in the nature of an occupation tax.¹¹⁰ According to these decisions therefore, while a city may control its own paving procedure and may make police regulations and require small licenses for regulatory purposes, it cannot interfere with the general state law licensing motor vehicles.

18. Does a state law govern the organization and control of fire departments?

While under any reasonable interpretation of the home rule provisions of the Oklahoma constitution, cities would seem to have complete power to control their own fire

¹⁰⁸178 Pac. 260. See also *Ex parte Phillips*, 167 Pac. 221. *Ex parte Mayes* 167 Pac. 749.

¹⁰⁹S. L. 1915. Chap. 173. Art. 4 sec. 8.

¹¹⁰*City of Muskogee v. Wilkins*, 175 Pac. 497.

departments, yet the state through a statute of 1917¹¹¹ has virtually established the two platoon system for all fire departments in the state in municipalities of over ten thousand population, by requiring that no paid or part paid employee of a fire department in such municipality shall be compelled to be on duty more than ten consecutive hours during the day time or more than fourteen consecutive hours during the night time. The larger home rule cities of the state, which come under this provision, seem to have accepted it without questioning the right of a state legislature to dictate to them in respect to the organization of their fire department. No cases have so far arisen concerning this law. While the courts might decide that the law is in conflict with the home rule right of a city, they might conceivably uphold it under the police power of a state in prescribing the hours of work of those engaged in especially dangerous or hazardous occupations.

19. Does a state law control municipal ordinances regarding weights and measures?

The state law provides for a county weigher who is "to receive, inspect, and weigh * * * all cotton, grain of every kind, live stock, hay, cotton seed, coal, wood, broom corn and all other farm products sold by weight * * " ¹¹²

Oklahoma City passed an ordinance providing for city scales and a public weighmaster who should weigh all goods offered.

In the case of *Oklahoma City v. Colt*¹¹³ it was held that the municipality had a right to establish such weighing facilities. The city could not, however, the court held,

¹¹¹S. L. 1919, Ch. 6.

¹¹²R. L. 1910. Sec. 1743.

¹¹³137 Pac. 359.

exclude the county weighmaster from weighing goods brought to him for weighing.

20. Does a state law control charter provisions in respect to the licensing of pool halls?

In the case of *Nicodemus v. State ex rel Parker*¹¹⁴ the question arose whether the city by ordinance has power to prescribe additional qualifications than those laid down by general law for persons who wish to conduct pool halls. The court held that the city has no power to prescribe additional qualifications; and that when a person has obtained a license for conducting a pool hall from the county judge, as required by law, and has paid to the city clerk the license fee, the city authorities have no power to refuse a city license. This case stands for the proposition, therefore, that in the exercise of its police power the city is subject to the state. This seems to be the usual relation of the city to the state, whether operating under a home rule charter or not.¹¹⁵

21. Does a state law control the hours and wages of laborers employed by the city?

It was held in the case of *State v. Tibbetts* (Oklahoma Appellate Court Reporter Vol. XVII, 450) that it was within the police power of the state to regulate the number of hours constituting a day's work for laborers employed by any municipality, and to provide that their compensation should not be less than current wages for like labor. This power, said the court, is inherent in the state, and no part of the power has by general law or special charter been delegated to the city. "A municipality is a creation of the State, exercising delegated powers only, and cannot, under our Constitution, arrogate to it-

¹¹⁴198 Pac. 847.

¹¹⁵McBain, *Municipal Home Rule*, p. 138-139.

self governmental powers in conflict with the general laws and fixed policies of state government."

SUMMARY

We have seen that all towns of less than two thousand are under the complete control of the legislature, except in so far as the legislature is limited by constitutional provisions. Cities of more than two thousand are divided into two classes; those which have not framed their own charters, and are under similar control and are subject to state law; and those which have framed and adopted their own charters. We have seen, further, that the constitution granted to cities of more than two thousand population the right to frame their own charters on condition that these charters should be "subject to and consistent with" the constitution and laws of the state. By neither the constitution nor the state laws has the relationship of the home rule cities to the state been defined in such a way as to make it certain. This has left the problem to the courts, when specific cases have arisen testing detailed points of this relationship.

The results of court determination of the legal position of the city in Oklahoma have been far from satisfactory. Under such a system the courts must inevitably determine upon large questions of public policy, since they must pass upon the question as to whether cities do or do not, under the constitution, have certain powers; and must also decide, in case of concurrent powers lodged in both the state and the cities, under what conditions the city must yield to the state in the exercise of these powers. Since the courts pass upon specific questions as they arise, the policy formulated by them, in so far as it can be called a policy, is not a consistent, well thought-out plan of city relationship to the state; but is more or less haphazard.

A good many questions involving such relationship have never been decided upon by the courts, thus leaving quite a large field of uncertainty regarding the city's place in the state government. Court decisions, furthermore, have been in a good many instances so conflicting as to increase the uncertainty.

Since the relationship of the city to the state is largely a question of the power of the city to do certain things and also a question of the superiority or inferiority of charter provisions to state law, it may be well to summarize the city's position in regard to the powers it does or does not possess.

The courts, in passing upon the various cases brought before them involving the powers of home-rule cities, have laid down, although not always very clearly, several criteria to be followed. These may be brought together and presented as a series of questions which might be asked whenever such a problem were involved.

Has the constitution given express power to the city?

Has the constitution expressly or by fair implication denied the power to the city?

Is the function of such general concern and of such a nature that the state alone should exercise it or regulate it?

Is the power of such a nature that the city may properly exercise it in the absence of state regulation?

In case of concurrent powers, is the function merely local in nature, or is it of such a nature that the city's power must be exercised either in subordination to, or concurrent with, the powers of the state?

Is the function of merely local interest?

Where the constitution has given express powers to the city, there can be no question as to the right of the city to exercise them. The only questions which may arise con-

cern the nature or extent of such powers. Such questions have arisen, as we have seen, in many instances as to the nature of the city's home rule powers, the meaning of public utility, the exercise of the initiative and referendum, and the city's power over franchises in connection with the state's power to regulate public utilities.

Several cases have arisen in which the courts have been called upon to decide whether or not certain powers are expressly denied cities by constitutional provisions or by fair implication. The courts have held in this connection that the city has no power to determine its charter procedure; that such procedure is either laid down by the constitution and is self executing, or where not so laid down must be supplemented by the legislature. The city has no power to establish a system of primary elections, since the constitution expressly provides that the legislature shall establish a primary system embracing all divisions of the state government.

The power to provide for jury trial is by implication taken away from the city, since the constitution provides that the accused shall have a trial by "an impartial jury of the county in which the crime shall have been committed." The power to try criminal cases in a summary manner is also by implication taken away by the constitution, since jury trial is necessary in all criminal prosecutions. By implication the city has no control over education, unless the legislature wishes to give it some slight power in this respect, since the constitution provides that the legislature shall establish an educational "system", and such a system would be impossible if every city under its charter powers could establish its own system.

There are a good many functions of government which the cities under their home rule powers have never tried to exercise. These include such important subjects as do-

mestic relations, wills and administration, trusts, contracts, real and personal property, banking, insurance, corporations, crime, mortgages, agriculture, examining for professional qualifications, and many other subjects. The cities themselves as well as every one else, seem to recognize the fact that these are matters of state concern rather than local concern.

The cities have, however, attempted to regulate and control several important classes of affairs which the courts have held to be of such general state concern that the legislature alone should control them, or at most should only delegate its power to the cities. Among such powers possessed by the state legislature are the control and regulation of public utilities in every respect save the granting of franchises. The legislature, however, may delegate this power to cities. Control of education might also possibly come under this head; though, as we have seen, it is implied from a constitutional provision that this power is withheld from cities. The examination and approval of bond issues is also a matter of state concern, unless the bonds are special assessment bonds regarding which the city assumes no liability. The licensing of motor vehicles is purely of state concern in so far as the license fee is equivalent to a tax. When it constitutes only a municipal police regulation and is not large enough in amount to constitute a tax, the city has power. While general taxation is a matter of state concern, taxation for all "legitimate purposes of municipal government" appears to be a matter of local concern. Although there are no decisions on the subject, it would seem that the regulation of contagious diseases, water supplies, sewer supplies, etc., are matters of general rather than local concern.

If one takes the Bodine decision at its face value, the city can employ its own methods of assessing, levying and

collecting taxes until the legislature has provided a system contrary to the city system.

In the case of concurrent powers, the courts seem to make a distinction between those powers which are merely local in nature and those which are general in nature. The police power is perhaps the best example. The city has large police power but it must be exercised current with and not contrary to the powers exercised by the state. From the Simmons decision it seems that the city can exercise this power in respect to the same classes of affairs as can the state. The city can, under this power, enact ordinances prohibiting the same offenses or punishing for the doing of the same acts which the state prohibits and punishes. While the city has the power to make regulations under the police power, it does not have the power to punish violations of them in a summary manner, or to provide fines of over \$20, including costs, or imprisonment at all, unless the legislature provides courts with juries in such cities to try the offenses in the first instance, if such violations when punishable by a greater fine or by imprisonment are by the law of the state made criminal in their nature. In case the legislature has not made violations of municipal ordinances involving such penalties "criminal in nature" and subject to "general laws relating to criminal procedure," the city would seem to have the power to try offenders in a summary manner and provide as large a fine and as great an imprisonment as is permitted by the legislature, though even this is doubtful in view of the language of the courts in the Johnson and Mochmann cases, cited above. From the general language of the courts in several cases, however, this is not entirely certain. The legislative enactment declaring violations of municipal ordinances "criminal in nature" has furnished ample ground for denying

the city this right, and so the general language regarding the sacred right of jury trial, etc., for the present at least, may be considered as dicta. The city can possibly organize its own courts until the legislature may make provision for municipal courts, although there has been no definite decision upon this point.

The state and the city have concurrent jurisdiction over the weighing and measuring of commodities, and both may provide for scales and weighers. The city cannot, however, force every one in the city to use the municipal scales to the exclusion of the county scales, which have been provided for by state law.

Public health is one of the functions in which the state and the city also have a concurrent jurisdiction. There seems to have been no case of legal conflict between the city and the state in respect to jurisdiction, although the state has exercised its powers over the city quite extensively, in its control over water supplies and sewer systems, its requirement that the city shall arrange for the treatment of prisoners having venereal diseases, etc. The fact that the state in many instances acts directly upon the individual in enforcing the health laws, instead of through city agents, perhaps has kept the city and the state from conflict in respect to their jurisdiction.

While the city can assess, levy and collect its own taxes, unless its provisions run contrary to state law, it is extremely doubtful whether it could classify property for the purposes of taxation. Where the state law subjects special classes of property to special taxes, as in the case of the gross production tax, the mortgage recording tax, the income tax, and the automobile license tax, the courts would probably hold that the city would have no power to levy a further tax. While the court decision upholding the exclusive right of the state to tax motor vehicles

was based on the police power of the state over highways, and so perhaps might not govern the other special taxes, there is little doubt that the courts would find some way of asserting the state's supremacy.

There are certain classes of activities which the courts have held to be of purely local concern. The first and most important of these is determining the form of municipal organization. The home rule city can determine entirely for itself whether it will have the mayor-council form, the commission form, the manager form, or any other particular system of city government. It may decide what officers it shall have, and what shall be their powers, duties, and salaries. The city can also establish its own system of election laws for choosing these officers. Although there has been no decision as to whether or not the city can lay down its own qualifications for municipal suffrage, it might reasonably be supposed that it would have this right, since municipal elections have been held to be matters of purely local concern.

The city has the right to dispose of its own public property. Charter provisions take precedence over state laws in respect to procedure for paving streets.

From this review of the decisions of the courts upon the home rule provisions of the constitution, it is evident that the city has not received very important powers as a result of these provisions, except in its unlimited control over its own organization.

CHAPTER XXII

ADMINISTRATIVE CONTROL OVER OKLAHOMA CITIES

No study of the relationship of Oklahoma cities to the state would be complete without an examination of the administrative control which the state exercises over its cities, both home rule and otherwise. This control, as we shall see, is exercised by means of various state or state-created officers, boards, commissions, etc. It will be observed from later discussion that this control concerns itself largely with those functions in which the courts have held that the state has a sovereign interest.

THE CONTROL OVER THE CITY ORGANIZATION BY THE GOVERNOR

The action of the governor of the state is necessary when a town, village or community, having a population of 2,000, wishes to become a city. Within thirty days after the filing of a petition for incorporation as a city by at least thirty-five per cent of the qualified voters residing in such a subdivision of the state, the governor must issue a proclamation calling for an election to determine this question and to select city officials. In this proclamation he establishes polling places, divides the city into temporary wards, and appoints three judges and two clerks of election for each polling place.¹ The county election board acts as a canvassing board for this election.²

¹R. L. Okla. 1910, Sec. 527.

²Ibid, Sec. 531, Bunn Supp. 1915, Sec. 3061; S. L. 1910-11, Ch. 106, Sec. 3.

Action of the governor is also required before a city may adopt its own charter. After the charter has been proposed by a board of freeholders and has been ratified by a majority of the qualified electors it must be submitted to the governor for his approval. He "shall approve the same if it shall not be in conflict with the Constitution and laws of this State."³ Amendments to this charter must also receive his approval.⁴ From the words of the constitution apparently the governor is obliged to approve the charter or its amendments unless he finds that they are actually in conflict with the constitution and laws of the state. Since no means are provided for controlling the discretion of the governor in this matter⁵ it is evident that he may veto the action of a city in establishing its own form of government.⁶ Up to the present time, so far as the writer is aware, this power has never been exercised and the governor has approved every proposed charter, usually after consultation with the attorney-general. The object of this provision was evidently to keep city charters in harmony with the constitution and general laws of the state from the beginning, rather than to wait until such time as they should be attacked in the courts after the city governments had been organized and important steps taken in reliance upon their validity. This object, however, has not been fulfilled for several reasons. In the first place, the governor has no time to devote to the details of city charters.

³Art, XVIII, Sec. 3a.

⁴Ibid.

⁵It has been held that the Governor of Oklahoma cannot be mandamus-ed either when he is acting in his capacity of governor or when he is acting as a member of a board. *State ex rel. Attorney General v. Houston*, 27 Okla. 606, 113 Pac. 190; *City of Oklahoma City v. Haskell*, 27 Okla. 495, 112 Pac. 992.

⁶McBain. *Municipal Home Rule*. pp. 560. 561.

In the second place, it would require highly specialized knowledge of the constitution, state laws and court decisions to determine whether particular provisions are or are not in conflict, and the governor is very unlikely to be a specialist in this field. Finally, even if the governor should determine that certain provisions of the city charter were not in conflict with the laws of the state, and should sanction them, this would not prevent the courts from passing on the validity of the same provisions when specific cases arise. Since, in the last analysis, the courts are the final authority to make such determinations, the governor is entirely too likely to pass upon city charters without a critical examination of their contents, thus "passing the buck" to the courts.

ADMINISTRATIVE CONTROL OVER THE OFFICERS OF A CITY

A law of Oklahoma of 1917¹, popularly known as the attorney-general's law, supplements previous statutory provisions for the removal of unsatisfactory officers by making it the duty of the attorney-general of the state to investigate complaints of official misconduct made against local municipal officers. Such investigation must be made when the governor shall direct; or when notice is sent to the attorney-general in writing and verified by five or more reputable citizens of the county before an officer authorized to administer oaths, that a municipal officer has been guilty of certain specified acts. If the investigation discloses a reasonable cause for complaint, proceedings to remove such an officer from office are initiated by the attorney-general in the district court of the county in which the accused resides or in the supreme court of the state. Before the attorney-general can bring the original suit in the supreme court of the state, he must

¹S. L. Okla. 1917, Chap. 205.

show the reason why the proceedings should be brought into the supreme court instead of the district court⁸ Undoubtedly the reason why the law provided that the case might be tried in the supreme court was the belief of the legislature that this court would be further removed from political or factional differences than the county court. Additional power is given the attorney-general in section 12 of this act, which authorizes him "on his own initiative, when he has reason to believe that the gambling or prohibitory laws, or other penal statutes of the state are being openly and notoriously violated in any county of the state or subdivision thereof, to institute proceedings in ouster" against the responsible officials "as fully as he is hereinbefore authorized to do."

Official misconduct is carefully defined in this act and includes:

"1. Any wilful failure or neglect to diligently and faithfully perform any duty enjoined upon such officer by the law of this state.

"2. Intoxication in any public place within the state produced by strong drink voluntarily taken.

"3. Committing any act constituting a violation of any penal statute involving moral turpitude."

Although this law has been in force but a few years, a great many municipal and county officials have been removed under its influence, although in many cases the old form of procedure has been employed.⁹ A number of officers have resigned their positions under the threat that this law might be applied.

In the case of *Burns vs. Linn*¹⁰ the court held that the state may impose upon officers of home rule cities cer-

⁸State ex rel., *Freeling v. McCollough*, 168 Pac. 413.

⁹R. L. Okla. 1910, Sec. 5592-5608. See also *State v. Davenport*, 193 Pac. 419.

¹⁰49 Okla. 526, 153 Pac. 826.

tain specific duties in the enforcement of state laws concerning matters in which the state has a sovereign interest, such as the suppression of gambling, prostitution, and the sale of intoxicating liquors. The state may also remove such officers for misfeasance or non-feasance in regard to said duties even if the city charter contains express provisions for their removal. The court based the decision on the theory that, even under the constitutional provision granting home rule, municipal police officers or other officers exercising sovereign power are under the control of the state. In the case of *Wooden vs. State*¹¹ this point was further emphasized. The charter of the city of Tulsa makes the mayor, the chief executive officer of the city, a conservator of the peace and imposes upon him the duty of enforcing all laws. Under him is the chief of police, with power to arrest in all cases. It was alleged that the mayor knew that laws and ordinances forbidding gambling and the sale of intoxicating liquor were being violated and yet failed to take any action. Upon his trial under the attorney-general's law, the court held that since it is the duty of a mayor to see that the laws of the state are enforced, failure to enforce them, or failure to see that the chief of police under him enforces them, is just ground for removing him from office.

STATE CONTROL OVER CITY ELECTIONS

We have seen that the courts have held that the time of holding elections for the choosing of city officials is a strictly municipal affair and also that the whole subject of such elections is a purely municipal matter, in regard to which the general laws of the state may be superseded by charter provisions; but that such provisions may not supersede the constitution of the state. Since

¹¹173 Pac. 829.

the constitution makes it the duty of the legislature to pass laws providing for mandatory primaries and for the nomination therein of all candidates in all elections for the state, district and municipal officers, the regulation of nominations for all municipal officers is vested in the state legislature and may not be exercised by a home rule city. All cities are required, therefore, to follow the state law in regard to primary elections. This law, which is discussed more fully in Chapter VII, provides for primary election officers, for official counters and for certification of returns by the county election board. It also provides when primary elections shall be held.¹² Practically none of the cities of the state have considered it worth while, in view of the above control, to establish further machinery for the regular elections, so that, as a rule, they simply follow the state law, which provides specifically for the holding of both general and special municipal elections.¹³ Where there is variation it is generally slight and has to do with minor details.

The county election board provides ballots for municipal elections. These must be as nearly in conformity with other election ballots as is practicable. The expenses of conducting an election are certified by the county election board to the city council, town trustees, or other legislative body of the city as the case may be, who are required to make proper appropriations to defray these expenses.¹⁴

The members of the county election board are allowed the sum of \$4.00 per day, for the time they are actually engaged in the conducting of city and town elec-

¹²See Chap. 7 above, The Election System.

¹³R. L. Okla. 1910, Sec. 440, R. L. Okla. 1910, Chap. X, Art. II.

¹⁴R. L. Okla. 1910, Sec. 442.

tions;¹⁵ and in case there is more than one city or town in the same county holding an election, the total salary expense is divided in equal portions between them. The board also charges to the city or town other items of expense incurred by it.¹⁶

The precinct election board is appointed by the county election board and the members are allowed \$2.50 a day for their services.¹⁷ It will thus be seen that both primary elections and other municipal elections as well, are either carried on entirely by the state or are under its supervision.

FINANCIAL CONTROL

The most important administrative control over the finances of cities in Oklahoma is placed by law in the hands of the county excise board. This board is composed of the county judge, county treasurer, the county clerk, the county attorney, the county superintendent of public instruction, the county assessor and one county commissioner, selected by the board of county commissioners.¹⁸

The control of this board extends to all municipal subdivisions of the state, and applies as well to cities having their own charters, unless such cities have provided their own machinery for passing upon the budget and levying taxes.¹⁹

The county excise board levies all taxes for the county, and for the township, cities (other than those cities that provide their own machinery for passing upon the budget and levying taxes,) towns, and school districts within the

¹⁵Bunn Supp. 1918, Sec. 3061-3063. S. L. 1910-11, Ch. 106, Secs. 3-5.

¹⁶R. L. Okla. 1910, Sec. 443.

¹⁷R. L. Okla. 1910, Sec. 444, Bunn Supp. 1918, Sec. 3065, S. L. 1910-11, Ch. 106, Sec. 5.

¹⁸S. L. Okla. 1917, Ch. 228.

¹⁹Bodine v. Oklahoma City, 79 Okla. 106, 187 Pac. 209

county.²⁰ To this board are submitted statements of the financial condition of the county and of all these municipal subdivisions at the close of the preceding fiscal year. Each report is accompanied by an itemized statement of estimated needs and of probable income from all sources other than ad valorem taxes for the current or ensuing fiscal year.²¹ This board has power to examine these estimates and may revise them as it sees fit, either by striking out, decreasing or increasing specific items, or by the addition of new items, which have not been asked for by the local officials. The board is particularly charged with the duty of seeing that all mandatory amounts, such as salaries, sinking funds and judgments, are placed in the estimate; and that the total of all appropriations for the county or for other subdivisions therein shall not exceed the millage levy which is permitted by the constitution or the statutes of the state.²² In case a municipality fails to make and submit an estimate the excise board has authority to make appropriations for current expenses and sinking fund purposes.²³ Also, if at any time public welfare or the needs of any municipal subdivision of the state shall demand it, the board shall make supplemental or additional appropriations for current expenses, keeping within the limits set by the state constitution. The procedure is as follows: the proper officials of the county, township, city, town or school district wishing additional or supplemental appropriations, file with the excise board a statement showing the financial condition. With this they submit a statement of the amount and purpose of each supplemental appropriation. If the financial state-

²⁰S. L. Okla. 1917, Ch. 226, Sec. 4-6.

²¹Ibid. Sec. 4.

²²Ibid. Sec. 5.

²³Ibid. Sec. 7.

ment shows a surplus of revenue in any fund or funds available for current expenses, the excise board may make supplemental appropriations to an amount not exceeding the aggregate of the surplus. In case a surplus is insufficient for the additional needs the excise board has the right to cancel in whole or in part previous appropriations against which there is no unpaid claim or contract pending and to substitute at its judgment the supplemental appropriations.

Having revised and approved the estimate, the excise board appropriates the sum necessary to meet the approved expenditures. Having ascertained the total assessed valuation of the county and of each of its subdivisions, it levies a tax in each for the following year, fixing the rates so as to yield the amount required for the expenditures which have been approved by it. To this amount is added ten per cent for delinquent taxes. The levies thus made by the excise board are certified to the county clerk, who extends them upon the tax roll.²⁴

The several items of the estimate as made and approved by the excise board constitute appropriations for the "several and specific purposes" named in the estimate. These appropriations may be used only during the year for which they are made, and for only the purposes specified.²⁵ Transfers between appropriation items may not be made except with the approval of the excise board, according to the procedure for supplemental or additional appropriations.²⁶

In case a city wishes to increase its current expenses beyond the ordinary limit fixed by law, the excise board

²⁴S. L. Okla. 1917, Ch. 226, Sec. 6.

²⁵Ibid. Sec. 6.

²⁶Ibid., Sec. 8.

is again called in. If the estimate of expenses certified to this board exceed the legal limit, and the board is of the opinion that the excess is reasonably necessary, they enter this fact upon the record of their proceedings and give notice, by publication, that a special election will be held on the second Tuesday after the first Monday in August next thereafter, for the purpose of submitting the question of such increase to the qualified electors.²⁷

In cities, at least fifty per centum of the qualified voters must take part in the election to make it valid.²⁸ The returns of such election are made to the excise board. In case the vote is favorable, the board certifies the increase to the county clerk, who extends it upon the tax rolls.²⁹

In respect to the assessment, levying and collection of taxes, a city has little practical control. The assessing of general property in the city is done by the county assessor,³⁰ and the making of the levies, as we have seen, except in those cities that have, by charter, provided for making their own levy, is in the hands of the county excise board. Appeals from the assessor's valuation go to the county board of equalization, which is composed of the county commissioners, with the county assessor acting as its secretary.³¹ This board passes upon these appeals in a "summary manner," whatever that may mean. Appeals from this board lie to the district or superior court of the county in

²⁷R. L. Okla. 1910, Sec. 7381. .

²⁸R. L. Okla. 1910, Sec. 7382.

²⁹R. L. Okla. 1910, Sec. 7385.

³⁰Bunn Supp. Sec. 7365f, S. L. 1915 Ch. 193, Sec. 1.

³¹Ibid Sec. 7365k, 7365m. S. L. 1910-11, Ch. 152, Secs. 11, 14.

which the assessment was made and from such court to the state supreme court.³²

The decision in *Bodine vs. Oklahoma City*³³ would seem to indicate, perhaps, that the home rule cities might carry on most of the functions in respect to assessment, levying and collection of taxes themselves, except taxes upon public utilities, automobiles, oils and minerals and mortgages and other such special taxes. As a matter of practice, however, the cities will probably leave practically all of the work of assessing and collecting the general property tax to the state or its agent, the county. Since the *Bodine* decision, perhaps more cities will avail themselves of the right of making their own appropriations and their own levy, instead of leaving this function to the county excise board, since the county excise board's control has been extremely unpopular in the home rule cities of the state. It would doubtless be inexpedient from every viewpoint to have the cities of the state assess property, equalize assessments and collect general property taxes. Not only would such procedure require a costly special agency, but it would also prevent a unified system of assessment from being put into effect throughout the state. If the city has its own special collection agency for taxes, this adds just so much more to the annoyances of the tax payer, without securing to the city any appreciable benefits.

The difficulties of the city at the present time in respect to the assessment of taxes lie largely in the fact that property in the city is unequally assessed and also is not assessed according to its real value. These conditions arise partly because county assessors are elected

³²*Ibid.* Sec. 736n. S. L. 1910-11, Ch. 152, Sec. 15.

³³79 Okla. 105, 187 Pac. 209.

and receive such small salaries as to keep able men from becoming assessors; and partly because no standards for the assessment of property obtain. While undoubtedly the city might remedy the present situation by the establishment of a competent appointed assessing authority and by the passing of an ordinance standardizing property assessment, it would seem much better, perhaps, to follow the suggestion pointed out in Chapter IX of centralizing the assessment of all property in a state tax commission, which should do the assessing under a strict administrative code as to methods of determining the valuation, etc. There are several taxes, moreover, over which the city could under no circumstance obtain control.

The assessment of public utilities is in the hands of the state board of equalization, composed of the governor, the state auditor, the state treasurer, the secretary of state, the attorney-general, the state inspector and examiner and the president of the board of agriculture.³⁴ This board subjects such corporations to taxation for state, municipal, public school and other purposes.³⁵ It makes its assessments on the basis of reports furnished by the corporations and of hearings held before it.³⁶

The returns of this board are certified by the state auditor to the county clerks of the various counties. These returns show the various portions of the property of public utility corporations located in each taxing subdivision of the state, and the assessed value placed upon each portion.³⁷ As soon as the county clerk receives the certification, he certifies, in turn, to the pro-

³⁴Const. Art. X. Sec. 21.

³⁵R. L. Okla. 1910, Sec. 7337.

³⁶Ibid. Sec. 7338.

³⁷Ibid. Sec. 7349.

per officers of the cities and other taxing subdivisions, the amount of assessment that shall be placed upon their tax rolls.³⁸ This property thereupon becomes subject to the same levy as other property.

The taxation of motor vehicles, as we have seen previously, is entirely in the hands of the state. The highway department is charged with the duty of collecting the motor vehicle license fee. Fees collected are apportioned as follows: Ten per cent is paid into the state treasury to the credit of the general fund. The remainder is paid to the treasurers of the respective counties from which the fees were collected, "in the ratio in which paid as between the various counties." The county treasurer is authorized and directed, however, to pay the treasurers of incorporated towns and cities, or cities operating under a charter form of government, twenty-five per cent of the money received by him from these fees on motor vehicles in the cities. This money is placed to the credit of the street and alley fund and can be used for nothing but street improvements. The remainder of this money is divided equally between the county road maintenance fund and the state highway construction fund of such counties. This registration fee, except in the case of manufacturers and dealers, is in lieu of all other personal property taxes, either general or local." The cities are expressly forbidden to collect any tax, license or fee from such vehicles unless it comes decidedly under the police power."

The county treasurer is responsible for the collection of general property taxes, which include the taxes on public utilities and taxes on bank stock, not only for the state and the county, but also for all smaller municipi-

³⁸R. L. Okla. 1910, Sec. 7350.

³⁹S. L. 1919. Ch. 290, Sec. 3.

⁴⁰Ibid. Sec. 12.

treasurers monthly all moneys which he has collected pal units within the county. He pays over to local on behalf of local governments.

The state also exercises control over bond issues. The attorney-general is ex officio bond commissioner of the state of Oklahoma. He prepares "uniform forms" and prescribes in detail methods of procedure under the laws of the state, in all cases where it is desired to issue public securities or bonds in any county, township, municipality, or any other political subdivision of the state. It is his duty to examine into and pass upon the legality of any securities so issued. Such security, when declared by the certificate of the attorney-general to be issued in accordance with the forms of procedure as provided, is incontestable in any court in the state, unless suit is brought in a competent court having jurisdiction within thirty days from the date of approval.⁴¹ It is not necessary for the city to secure such approval, however, where improvements are to be paid for by special assessments.⁴²

STATE CONTROL OVER PUBLIC UTILITIES

As we have seen before,⁴³ the corporation commission has complete control over the rates to be charged and the services to be given by public utilities, even though the cities have their own charters. The granting of franchises, however, is in the hands of the city,⁴⁴ although the state may exercise "control and regulation" of "such use and enjoyment."⁴⁵ So far the state, acting through the corporation commission, has exercised no control over the granting of franchises, but leaves the

⁴¹R. L. Okla. 1910. Sec. 376-378.

⁴²City of Lawton vs. West; 33 Okla. 395. 126 Pac. 574.

⁴³See Chapters VI and XXI.

⁴⁴Const. Art. XVIII. Sec. 5 a and b.

⁴⁵Const. Art. XVIII. Sec. 7.

pipe, car, express, and telephone companies do not need matter entirely to the cities themselves. Railroads, oil-franchises, however, since by the constitution they have the right to construct and operate their lines "between any points in the state."⁴⁶ The commissioner has not, so far, attempted to make any changes in the terms of the existing franchises, unless the fixing of rates or the establishment of standards in service has made it necessary to do so.

The corporation commission has the right to change a franchise granted by a city to a corporation, even though a part of the franchise involves a contract for a specific rate.⁴⁷ It may also change service requirements as it sees fit, even when such requirements are a part of the franchise.

It is clear, then, that while a city has the right to grant franchises, this power is very much limited since rates and service conditions, which as a rule form an important part of most franchises, may be changed at any time by the corporation commission.

STATE CONTROL OVER PUBLIC HEALTH

The control of the state over public health is treated at some length in Chapter XIV, so that it will not be necessary here to do more than mention some of the principal ways in which this control is exercised.

By state law, the town board of trustees in each incorporated town constitute its board of health; and the mayor and common council of a city of the first class constitute its board of health. The powers and duties of such boards are prescribed, and they are required to carry out orders of the state board of health. Char-

⁴⁶Const. Art. IX, Sec. 2.

⁴⁷Pawhuska vs. Pawhuska Oil & Gas Co. 64 Okla. 214 166 Pac 1058, 250 U. S. 394.

ever the state board of health considers it necessary to take charge of any district in the state infected with contagious disease, it may do so; and may enforce rules and measures designed to check or suppress the disease. It may abate nuisances injurious to public health and may make investigations and institute inquiries as to certain specified matters related to public health. It has large powers to investigate the sanitary conditions of public institutions, mines, transportation facilities and places of public resort; and it may recommend and prescribe measures to remedy unsanitary conditions disclosed by such investigations.

The bureau of venereal diseases established under the state board of health has authority to discharge as cured persons who have been treated for venereal diseases after being confined in penal institutions. The collection of vital statistics is supervised by the state commissioner of public health, who appoints all local registrars of vital statistics.

The examination of public water supplies, and the right to pass upon sources and plans for proposed water-works systems, and sewerage disposal or treatment plants, are functions of the state board of health, with an appeal to the district court.

It will thus be seen that the state has a great deal of direct power, as well as supervisory power, over local public health work.

STATE CONTROL OF THE SCHOOL SYSTEMS OF THE CITIES

The cities of Oklahoma have no control over their school systems in any way, except that cities over five thousand may, by charter provision, determine the numbers of the school board, their terms of office, the time and manner of their election; and may attach adjacent territory outside the city but in the school district to the appropriate voting precinct. The school dis-

trict is a separate corporation, and although each city of the first class constitutes an independent district, this corporation as such is entirely unrelated to the municipal corporation within whose area it may lie.

CRITICISMS AND RECOMMENDATIONS IN RESPECT TO ADMINISTRATIVE CONTROL

It is undoubtedly true that many if not all of the functions mentioned above are of much more than local importance, and that consequently the state has a concern in seeing that they are properly performed. Few would dispute the fact that the state ought to have some degree of control over such matters of general interest as health and education, for instance. Such being the case, the question may well be asked, is this control being exercised in such a way that the interests of the state are being protected, and such that the city can perform its work to the best advantage?

The first thing which attracts attention in a study of the control of the state of Oklahoma over these important activities is the fact that it is being carried on by officers, boards and commissions which have no relationship to one another and only an occasional relationship to the city. The result of this situation is, that there is no well-organized and well-directed control over the cities in regard to matters of general importance. By law, many functions are wholly or partly withheld from the city, so that it cannot exercise any adequate control over them; while the control exercised by the state, on the other hand, is haphazard and is carried out by agents who too often have no understanding of the city's needs, nor possess adequate knowledge on the basis of which to make decisions, nor any machinery for securing this knowledge. It may be well to criticise the present plan of administrative control point by point in order to discover, if possible, a

system whereby such control might be exercised much more effectively.

CONTROL OVER THE CITY CHARTER

We have seen that the governor passes upon a city charter very much as a ministerial duty, after consulting as to its legality with the attorney-general, and that the courts, in the last analysis, determine whether or not it is in conflict with the constitution and laws of the state. Hence it would seem that the vise' is either nearly useless, or else should be entrusted to some body that could determine in a final manner, after careful examination, whether or not a proposed charter contained any sections conflicting with the constitution or the general laws of the state. It might be better, as in the state of Washington, for the legislature itself to lay down in some detail the powers which a city might exercise through the medium of its charter. A still more desirable plan, perhaps, would be to give the city very large powers, which it should exercise under the supervision of a centralized state administrative department. This solution will be discussed later. The result of the provision as it now stands is that the governor to all intents and purposes simply shifts to the courts the burden of saying what is in conflict with the constitution and general laws of the state. It is certainly contrary to the best principles of representative government to entrust to the courts such a very large part of the determination of public policy. Under the present system, however, this result is inevitable.

Moreover, as things now stand, the city is continually uncertain as to its powers. It may be prevented from undertaking many functions by fear that its acts will be held unconstitutional or illegal by the courts; in which case of course, the interests of the citizens suffer. On the other hand, if it does venture upon various

activities it is liable to find itself involved in expensive lawsuits. Further, the position of the courts is far from certain on many important points, thus leaving the city in the position of not being able to know where it stands.

CONTROL OVER CITY OFFICERS

While the "attorney-general's law" may be of value in removing from their positions officers who wilfully neglect to perform their duties, who are drunkards, who violate penal statutes, or who commit acts "involving moral turpitude," it does not serve as an adequate check upon poor and inefficient administration. There is no investigating body continually checking the work of the city and seeing that it is kept up to the standards set forth in state laws. The cities make no financial reports to the state or its agents, except those made to the excise board; there is no investigation regarding their financial condition, and no auditing of their accounts by state authorities. Moreover, there is no control, except through the power of removal, over those city officers who have been held by the courts to be responsible for the carrying out of the state laws within the city.

Undoubtedly, however, the law has been of very great value in doing away with and preventing absolute corruption in municipal and local government, by acting as a sort of "big stick" to keep the less conscientious type of city official from wandering too far from the right path.

CONTROL OVER ELECTIONS

As has been pointed out, most of the cities follow the state law quite closely in respect to elections.⁴⁸ This is

⁴⁸See page 578-9.

largely due to the fact that the constitution imposed upon the legislature the duty of establishing a mandatory primary election system, which should "provide for the nomination of all candidates in all elections for State, district, county, and municipal officers."⁴⁹

Few of the cities have considered it worth while, in view of this situation, to establish a separate election system. Even where a separate election system is provided, the general law is followed in the most important respects. There has been very little dissatisfaction with this condition, however, for it works quite smoothly in practice.

FINANCIAL CONTROL

Financial control over the cities is exercised, as has been pointed out, in respect to the city budget, taxation and bond issues.⁵⁰

There has been more adverse criticism in regard to the power of the county excise board over cities, than has been made concerning any other phase of state control. This board, it is felt, is not a proper body to supervise such an important municipal function as budget-making. The members of the board are trained in neither law, accounting nor administration; they have no particular knowledge of municipal affairs and they are given no power by which to secure information such as is necessary to pass upon the budget problems of the larger cities, either through the proper kind of reports from the cities or through the agency of a specially trained expert staff. In a large number of cases these board members are selected from country districts and so are not in sympathy with the city and its work. They are elected by the county as a whole for certain specific

⁴⁹Const. Art. III Sec. 5.

⁵⁰Const. Art. III. Sec. 5.

duties and therefore cannot be chosen because of fitness for financial supervision over cities. In fact, a small city an agricultural county has extremely little to say even regarding their election. The claim is often made that county officials acting in this board play politics with the city budget by reducing it as low as possible, since in the mind of the ordinary voter, the ability to cut down expenditures in any way is accounted unto an official for righteousness.

The officers of the larger cities feel that, owing to their intimate contract with municipal affairs, they have a better grasp and more detailed knowledge of the city's needs than can possibly be acquired by the county excise board. Since they make their plans after careful study and consideration they feel that to have them interfered with by such a board, and to be compelled to submit small changes in their expenditures to it for approval is a great injustice. They point out quite correctly that while this law may have been applicable to the eastern part of the state when it first came into the Union, as there had previously been no organized local government in the Indian Territory, and therefore perhaps some sort of supervision was necessary, the situation has entirely changed within the past few years; and the cities in the eastern part of the state, with few exceptions, now have just as responsible government as those in other parts.

Those who have studied the situation most carefully agree that the larger cities of the state should either have complete home rule in such matters, or else that financial control should be exercised by a state department competent to make adequate decisions. Under the decision in *Bodine v. Oklahoma City* it is possible, of course, for a charter city to do away with this control by establish-

ing its own machinery for the making of the budget and the levy of taxes. While many believe that some sort of control over the finances of small cities should obtain, they contend that for the reasons given above the county excise board is not the proper authority to exercise it.

TAXATION

It has been shown earlier in this chapter that while a city, according to law, might possibly have the right to set up a separate assessing and taxing agency, yet because of the uncertainty of such power, the conflicts that might ensue in case the courts narrowed or reversed the Bodine decision, and the cost involved, it is not expedient that it should do so. The result is that the assessment, levy and collection of taxes are in nearly every case under the control of the state. Undoubtedly there is much to be said for the centralization of such functions in the state, provided that it carries them out properly. However, the state of Oklahoma at present exercises these functions in a very unsatisfactory manner, so that the cities are suffering. As the city's millage levy is limited by the state legislature to six mills, unless the charter provides otherwise or unless there is a special election for a certain stated purpose, and as the assessing is done by elected, untrained and irresponsible county assessors, who, as a rule, assess the property at only from one-third to one-half of its true value, the cities are finding themselves unable to obtain enough money to carry out their functions properly.

Municipal control over assessing and collecting taxes sufficient to carry on the city's enterprises would not be an adequate remedy to this situation. Even if the city should establish its own tax officers to assess property and collect taxes for the support of the municipal gov-

ernment, it would secure little relief, as the expense would frequently be so great as to largely offset any advantage derived from such a plan. Moreover, if any one city could bring about the listing of property within its borders at its real value, the county assessors would probably adopt this valuation in making out their tax rolls; and since other property in the county and the state would be assessed at the usual low valuation, this particular community would be paying more than its share of the county and state taxes. A better type of state control over taxation is undoubtedly preferable to local control, with its attendant disadvantages.

The present method of assessing public utilities is also most unsatisfactory in so far as the city is concerned. The fact that the state board of equalization is composed of ex officio members necessarily means that they are not experienced in the complicated matters involved in the valuation and assessment of public utilities. Even if they were experts along this line, they have no machinery for determining the value of utilities, and therefore it is largely "guessed at," or else the values placed upon them by the corporations themselves are accepted. It is the feeling of a good many managers of the smaller utilities, and of numerous city officials and other persons familiar with the situation, that in the hearings on valuation, the larger utilities, being more ably represented and having their affairs more adequately analyzed, secure a much lower valuation relatively than do the smaller ones. Now it happens that most of the larger utilities are in the larger cities, the very cities which, because of their added responsibilities, need more money than do the smaller ones.

This extremely unsatisfactory situation can only be remedied, so far as the writer can see, by a complete reorganization of the taxing system of the state, accord-

ing to the suggestions in Chapter XXIII. Probably a state tax commission should be established, having general control over all tax matters. The state itself should provide a trained corps of assessors instead of the elected county assessors who have charge of the work at the present time, or should at least have local assessors under strict administrative control by the tax commission.

CONTROL OVER FRANCHISES AND UTILITY RATES

So far, the state has not attempted to exercise any control over the granting of franchises, although under the constitution it might possibly be able to do so.⁵¹ Up to the present time there has been no case on this point. We have seen, however, that the corporation commission has modified franchises granted by a city where they were given on condition that a certain contractual rate for service or a certain standard of service should be maintained. By changing the terms of the franchise in these respects, however, the state virtually takes away from its cities the two most essential elements of an ordinary franchise, leaving to the city only the right to grant or withhold a franchise or to fix certain conditions for its exercise, such as the specification that all electric light poles, as far as possible, shall be located in alleys, or other restrictions of like nature.

There does not seem to be much opposition on the part of Oklahoma cities to the regulation of rates and services by the corporation commission. Logically, as is pointed out in Chapter VI, the state must regulate the majority of public utilities.

STATE CONTROL OVER PUBLIC HEALTH

The state of Oklahoma, as we have seen, exercises control over health in the city in two main ways: by su-

pervision and investigation, and through direct action in case of contagious diseases, the inspection of hotels, etc. Since the smaller towns and cities cannot well afford to pay competent health authorities, it might be well to have the state exercise direct control over the health activities of counties and small cities. Or, as is suggested in the final chapter of this work, all the health work in the county, including the health work in the cities, could be taken care of by the county health authorities, under the strict control of the state health authorities.

STATE CONTROL OVER EDUCATION

In a number of ways the complete separation of the school system from the city government has much to recommend it. From the viewpoint of municipal finance, however, it is far from desirable. Good administration would seem to demand that the expenditures of the city should be viewed by some authority in their entirety and in their relation to the total revenue. This, of course, is impossible under the present system; nor, as things stand, is there any relationship between the borrowing power of the city and that of the school district. Many schoolmen of the state are strongly opposed to the control over the school district budget and levy exercised by the county excise board.

While it is probably best to have the educational budget largely made by educational authorities, it might be well, at least, to have the budget presented to the local government department, which is discussed more in detail in the following pages, together with the budget for the city's other expenditures, so that the department itself, as well as the general public, could secure a unified view of municipal expenditures and receipts.

A PROPOSED LOCAL GOVERNMENT DEPARTMENT

This brief analysis would seem to indicate not that the state is exercising too much control, but that it is failing to employ such control in the most efficient manner. Subjecting the city to a great number of unconnected, inexpert, untrained and casual authorities is surely not the best method of controlling municipal administration.

As a substitute for the methods that are used at the present time, the writer would suggest that much of this control should be centralized in one body having expert staffs appointed and paid by the state.

It would not be expedient, of course, to bring together under one management all the functions which we have discussed; for, as has been seen, some by nature appertain to the state itself and to all its subdivisions, and some particularly to the city. The assessment and collection of taxes, education and the regulation of public utilities belong to the former group. We have suggested possibilities of bettering the present methods in respect to taxation and education. The management of elections may well remain unchanged, unless an amendment to the state constitution should abolish the provision making it mandatory upon the legislature to establish a direct primary system which includes the nomination of candidates for municipal officers; as the present arrangement secures a fair degree of efficiency and economy without subjecting the city to any serious inconvenience. It seems that the regulation of public utilities within cities should remain under the corporation commission, for reasons already stated.

Those municipal functions which, in the opinion of the writer, ought to be supervised by a single state department rather than by several uncoördinated agents

and agencies which now have charge of them are: the organization of the city government and the framing of the charter; control over city officials in respect to their administrative efficiency; health and sanitation; some supervision of public works and municipally owned public utilities; and municipal finance. This same control should probably extend to the county. We cannot, however, discuss this phase of the problem here.

All of the functions named above are largely local in scope, and yet are intimately connected with the welfare of the entire state; all are more or less related to one another; all are pre-eminently activities the control of which demands administrative flexibility combined with a high degree of expertness—qualities best supplied by an administrative department.

Such a department should be headed by a well paid secretary appointed by the governor, who should be supplied with an expert staff of accountants, statisticians, lawyers, physicians who have specialized in public health and sanitation, and engineers.

The functions of this department should be:

1. To pass upon a proposed charter, and to supervise the exercise of municipal powers under the charter. The city should be restricted by law as little as possible in respect to matters placed under the charge of the department, thus permitting a much more flexible administrative control than can exist under present conditions. This would do away with the vise' of charters by the governor and to a large extent with the determination of municipal powers by the courts. The department could pass upon the exercise of unusual municipal powers largely on the grounds of expediency. Such an arrangement would make it possible for cities to enjoy a much greater degree of freedom than they have at present; as many details now fixed by law in a hard and fast manner could be left

to the discretion of the board. This means that each case would be decided on its merits, without the hampering influence of rigid laws.

2. Through requiring reports, examining finances, and providing for inspection, the department could well check up the administrative efficiency of municipal officials. In case of gross inefficiency, torts or abuse of power, it could report to the attorney-general, who would be empowered to take the proper kind of action.

3. It should have the same kind of control over sewage disposal and waterworks systems as the state board of health possesses at the present time.

4. This department should have general financial supervision over cities. It should approve the budget, seeing particularly that all mandatory amounts are included. It should not, however, have power to increase or decrease specific items. In case the total expenditures asked for in the budget were in excess of the legal limitation, the approval of this department should be secured.

The department should act as the auditing authority for all municipalities, and should require reports from them according to forms prescribed by itself.

Such a department might well be given some control over the borrowing policy of the city. This control should particularly have to do with sanctioning plans of undertakings for which the cities are borrowing, such as waterworks systems, electric light plants, gas plants, sewer systems, etc. A bureau in the department should pass upon the legality of a proposed bond-issue, as the attorney-general does at present. The department should also approve the methods of providing sinking, depreciation, and reserve funds. Many small cities, in particular, vote bonds for public utilities without any adequate plans, with no knowledge of costs, and with little conception of the utility as a business, with the result that they

soon find themselves unable to carry on such enterprises successfully. The mere fact that the people vote for a bond issue is no guarantee that the undertaking will be successful. If all issues for such purposes were first approved by this department, before being voted upon by the people, there would be a reasonable certainty that the undertaking was at least started on a firm basis.

5. This department should act in an advisory capacity to cities and their officials. In a short time it would accumulate a reservoir of invaluable information. Its trained staffs could interpret this information for the cities and so make it usable.

Through such a department, in the opinion of the writer, an expert administrative regulation would take the place of the uncoordinated and haphazard authorities which now control the cities of the state; and the cities would enjoy a much greater degree of real freedom and genuine home rule than is possible under the present system.

CHAPTER XXIII.

SUMMARY AND RECOMMENDATIONS

From our examination of the government and public law of Oklahoma we have found certain impediments to the efficient functioning of the state government and administration. If our former analysis is correct these are:

Excessive constitutionalism.

Popular election of many state officers.

An incorrect relationship of the executive to the legislature.

Wrong administrative organization in the state government.

Decentralization in local government without any adequate administrative supervision.

No well coördinated administrative supervision of municipal government.

Lack of civil service methods.

A decentralized judicial system.

A well coördinated plan of state, local and municipal administration must correct these faults and substitute a workable, responsible, and efficient state government. The present faults will be summarized here and methods of doing away with them will be discussed.

CONSTITUTIONAL CHANGES

A long and detailed constitution, filled with limitations upon the legislature as well as many general limitations, and loaded with statutory provisions, makes the government inflexible. No matter how unsatisfactory it may be, the governmental organization of Oklahoma cannot be changed by the legislature unless the change

is ratified by popular vote; and as the people are not interested in public administration, an intelligent popular vote in regard to such organization is a practical impossibility. Detailed constitutional provisions and limitations throw upon the courts the heavy burden of determining whether legislative enactments are or are not in harmony with the constitution. Moreover, since the courts do not give declaratory judgments but merely decide cases coming before them in the regular way, it is necessary at present for someone to break a law before the courts will pass upon its constitutionality. No argument is needed to show how this situation tends to destroy respect for law. A far more simple constitution establishing merely the general outlines of the government and entrusting the larger part of organization to responsible legislative and executive departments would go a long way toward remedying the difficulties and confusion which exist at present in our state government. Few limitations upon the power of the legislature, and no statutory law whatever, should be included in the constitution.

POPULAR ELECTION OF STATE OFFICERS.

We have seen that the governor and practically all the chief administrative and judicial officers of the state are elected by the people. Those who believe that such officers should be chosen in this manner maintain that since they are elected by the people they will be responsible and accountable to them. The theory of accountability and responsibility due to popular election has been questioned by many political scientists; and certainly in Oklahoma it has not proved sound. In the first place, the most important of these officers, including the governor and the auditor, cannot hold of-

fice for two successive terms. Fear of failure to be re-elected, then, does not influence their actions. Moreover, the people cannot know or test the qualifications of those applying for office; so that the man elected is too often not the best qualified candidate, but the most skilled politician.

A further argument against the theory of responsibility to the people is the fact that in general the work of the elected state officers is not the determination of policy, but merely administration. While they run for office on platforms involving large public policies, they have, with the exception of the governor, practically no control over legislation. The people cannot, therefore, hold them responsible for the carrying out of the policies which they advocated during their campaigns. Their duties consist of technical administrative or ministerial work, and the people have no way of checking them up in such work.

Finally, the people have established no agency, other than the legislature sitting as a court of impeachment, to hold these officers responsible. Anyone who has given the slightest study to government knows that such control amounts to absolutely nothing in checking up poor administration, and to almost nothing even in punishing offenses involving moral turpitude. The twelve principal state officers are not responsible to the governor, for they are his colleagues. The people elect a large group of administrative officials, therefore, who are practically irresponsible.

The remedy for this situation would seem to be a state organization in which all administrative officers are appointed by the governor. The details of such an organization have been discussed elsewhere.¹

¹See Chapter IV. State Administrative System.

CHANGING THE RELATIONSHIP OF THE EXECUTIVE TO THE
LEGISLATURE.

Perhaps the greatest weakness in our present state organization is the unsatisfactory relationship between the executive and the legislative departments. The problems of government today demand much study based upon a wide knowledge of administrative processes, sound economic relationships and public law. Such expert knowledge can be possessed by only a few, who should be leaders. If American political experience has proved anything, it is that expert leadership is seldom found in the legislature, as now constituted. The viewpoint of members is too narrow, their interests are too local, or too special, their ability to obtain information too limited, to make them leaders in political thought. This situation cannot be remedied until the heads of all important state departments are selected from among the members of the legislature, thus making seats in that body attractive to the ablest men.

While the people are demanding that the executive be their responsible leader in respect to public policy, they have at the present time no method of holding him responsible. They cannot hold him responsible for policies which he advocated during his campaign, since the carrying out of these policies requires the favorable action of the legislature. No method other than subterranean is provided by which a governor who has been elected by the state at large on certain policies can present his policies to the legislature in the form of well drawn up laws, push these laws in the legislature, or demand a "show-down" in case the legislature will not enact them. Unless the governor is provided with some way by which he may definitely initiate laws, fight for them in the

legislature, and resign or call a new election in case the legislature refuses to pass them, he cannot be considered to be responsible to the people for the policies he advocated when asking the people for election.

Either of two methods might be a solution to the present difficulty. The executive might still be elected, but he and the administrative officers under him might have seats in the legislature with power to initiate legislation and to vote. In case of a fundamental disagreement between the executive and the legislature in respect to policy, he might be given the privilege of resigning or of dissolving the legislature and calling a new election. If sufficient of his opponents were elected to form a majority, he would be forced to resign and a new governor would be elected. In case the election were favorable to him, he would continue in office and be able to carry out his policy. In this way the governor would become responsible to the people for policies.

The second method would be to have the chief executive selected from the membership of the legislature, perhaps by an elected governor, and to let him form his cabinet from the members of the legislature. He would be made responsible for the initiation of policy; much as at the present time the governor is by law, if not in reality, responsible for the initiation of the budget. He and his cabinet would be an integral part of the legislative body. In case of disagreement between the executive and the legislative body, the executive could either resign or call a new election for members of the legislature.

Under either of these methods the terms of legislators must be much longer than two years, in order to spare

the state an unduly large number of elections, and in order to make it worth while for the best men to enter political life.

While, perhaps, we are not ready at present for such a change as the second method involves, yet in many ways this would be an improvement upon the former system. Since the chief executive would not be under obligations to a great number of his friends who helped elect him, he would be much freer in making his appointments than he could be otherwise. As he would be a member of the legislative body itself, the legislature would be far more likely to cooperate with him than it would with an outsider. The practice of choosing an executive and the heads of all important departments from the legislature would make seats in that body much more sought after than they now are, thus improving the quality of the legislature. As a rule, only legislators of influence and experience in public business would be chosen for the important executive positions. Further, the legislature would be a potent agency in controlling the governor and in making him responsible.

THE REORGANIZATION OF STATE ADMINISTRATION.

We have seen that at present administration in Oklahoma is carried on by thirteen elected constitutional officers, and by about sixty-five other officers, boards, commissioners and departments; that the present administrative system is irresponsible and does not function harmoniously; that the functions of government are distributed in an illogical way among a great variety of nearly independent officers, boards and commissions; that as a consequence the state government is both expensive and inefficient.

Any attempt at reorganization should involve some such plan as the following:

a. An executive department with a chief executive as the responsible head.

b. A staff of highly trained technical advisors engaged in collecting information, making suggestions and working out the details of policy for the administration.

c. A civil service and recording department which would give examinations for all positions which do not require administrative skill, or such special qualifications as cannot readily be determined by examination.

d. A group of departments to carry out what the New York Bureau of Municipal Research calls the "proprietary functions"; viz., finance, construction and care of property, furnishing legal opinions, recording, etc.

e. A group of departments charged with carrying on the services which the state performs for the public, such as education, health, care of special classes, furthering agriculture, promoting and regulating business and commerce, looking after the interests of labor, and preserving public peace and order.

f. A department of local government to supervise those phases of county and city administration in which the state has an especial interest.

Under such a plan, instead of some seventy-eight officers, boards, commissions, etc., which the state now has, there would be a chief executive having under his control, through the power of appointment and removal, the heads of some dozen departments, among which would be grouped all of the different administrative functions.

The plan here advocated is not new or untried. During the past decade there have been several reorganizations

in state administration.² Without exception they have shown an inclination away from the theory of a large number of elected administrative officers, and toward a rather small number of appointed heads of state administrative departments. There has been a strong tendency also to concentrate most of the state activities under the control of these few officers, instead of having the many unrelated, unsupervised boards, commissions and officers which formerly obtained.

REORGANIZATION OF COUNTY GOVERNMENT

We have seen that county government in Oklahoma is organized by state law, and all its powers, duties and responsibilities are defined minutely by state law. It is, therefore, completely under the legal control of the state. In carrying out the functions imposed by state law, however, it is subject to very little centralized control. The county officers are not appointed by the state but are elected by the people in the county. The county commissioners do not form a board of control with supervision over the work of all the other county officers, but are limited to the carrying out of their own specific duties. Neither are they subject to effective state administrative control, although the county is performing various functions of much wider than county concern.

Two important steps should be taken in the reorganization of county government. First, there should be a redistribution of functions, as between the county and the state, and other subdivisions, and, second, the county itself should be reorganized.

²Such reorganizations have occurred in Illinois, Idaho, Nebraska, Massachusetts, Washington, Ohio, California and Maryland. Some twelve or thirteen other states have proposed plans for administrative reorganization or have instituted inquiries concerning it.

The need of a uniform policy in assessing taxes throughout the state indicates that the duties of the county assessor should be transferred to a state department of finance. Judges, county attorneys, and sheriffs are engaged almost exclusively in performing state functions which should be administered with an even hand throughout the state. There is no excuse for the law's being enforced in different ways in different counties of the state. The function of the county attorney as legal advisor to the county might possibly warrant his appointment by the county commissioners, subject to the approval of the state department of justice. There is no inherent reason, however, why a state-appointed county attorney might not perform the legal functions for the county quite as well as an official appointed by the county itself. Court clerks, of course, should be appointed by the courts which they serve. Nothing is gained in any way by electing such officials. It seems advisable, also, to place "indoor" poor relief in the hands of the state rather than the county, for the reason that there are so few who need it in the average county that proper facilities cannot be provided or the cost is excessive. The rapid development of the automobile and motor truck, with the consequent need for well coördinated, well paved, and well cared for systems of roads, seems to indicate that all main highways should be entirely under the control of the state rather than the county.

The functions of the excise board should be given over to the state department of finance. The township functions in regard to health and roads should (for the reasons discussed in the chapter on local government) be transferred to the county. The county, rather than the district, should probably be made the unit of school administration.

The county would then be reduced to a division of government having only six main functions, which might well be entrusted to six departments, viz: finance, public welfare, public works, public records, agriculture, and education.

There are three ways in which the heads of these six departments might be chosen. They might be chosen by the governor and so be directly under the control of the state, they might be elected by the people, or they might be chosen by a manager who would serve under an elected board of county commissioners. The first method probably would be impracticable at the present time. The second method would subject the county administration to most of the weaknesses which it now has, and would make it impossible to secure competent persons to man these important departments. It seems more advisable, therefore, to have the people elect a board of county commissioners, three in number, selected from the county as a whole, who should be the legally responsible body for the county government. They should be unpaid and should have no powers at all over administration. A well qualified and well paid county manager, selected by the commissioners, should be responsible for the conduct of all administration in the county. He should have the right to appoint and remove the heads of the various departments. He should prepare the county budget and submit it to the commissioners for approval.

The local government department through its various staffs should exercise control over the county administration. This control should include the requiring of reports, and the making of investigations, together with supervision, advice, and direct aid from the central state department in case of necessity. Such a system would furnish the counties of Oklahoma with an effective

organization for carrying out their functions, and at the same time would give the state sufficient control to insure efficient and honest administration.

ADMINISTRATIVE SUPERVISION OF MUNICIPALITIES.

The present relationship of the municipality to the state is unsatisfactory both in respect to those cities which have adopted their own characters and those organized under the state law. The state law organizing towns of less than 2000 population, and also cities of the first class which have not adopted their own charters, is highly unsatisfactory in that it prescribes rigidly the form of organization which they must adopt, namely the mayor-council form for cities, and a very inefficient type of commission government for towns. If towns and villages were able to adopt the manager plan of government they would be able to carry on their affairs much more effectively than they can do at present. It would seem better to give them more powers, also, than they now enjoy, but have them exercise their powers under an adequate administrative control. The control over municipal finance at present given to the excise board should be taken over by the local government department.

In the study of the legal relationship of the city to the state, we saw that the home rule city is in a far from satisfactory position. It does not know its powers, duties or responsibilities. As city charters are usually framed by persons without a wide knowledge of laws and court decisions governing the relationship of the city to the state, such charters, particularly those of small places which do not have adequate legal advice, are usually filled with provisions which conflict with the constitution or general laws of the state. These conflicts are not examined into with care by the governor and so rectified, but re-

main in the charter, thus supplying a fertile field for future litigation. Further, the courts have never passed upon several important powers, with the result that the city does not know where it stands.

A possible remedy for this situation might be for the legislature, in view of the questions which have arisen in all the so-called home-rule states and in view of the court decisions laid down in these various jurisdictions, to pass a law defining with some exactness the powers of cities and their position in case of conflict between them and various kinds of state laws. For instance, the legislature might well say that a city's passing upon its own budget and making its own levy was a purely municipal function, but that the general state law should govern in respect to the classification of property for taxation, the assessment of property and the collection and distribution of taxes.

Perhaps an even better solution of the problem would be to so change the constitution as to give the city all power except that expressly taken away from it, and then let it carry on its functions under strict administrative control, particularly those functions in which the state has a very definite interest. It is far from good policy to try to determine by law the manner in which all these municipal functions shall be carried on, for conditions differ greatly in the various cities of the state. The local government department, as has been pointed out before, should have administrative control in respect to all those matters in which the state has a definite interest. Such control would keep the city from the legal tangles in which it is involved at present, would insure that those functions in which the state has an interest were taken care of properly, and would do away with the uncoördinated, ineffective control which is exercised over the city at the present time.

JUDICIAL REFORMS.

Oklahoma's present judicial system, which is scattered and disconnected, should be reorganized by the consolidation of all the courts into one general court of judicature. This court should be invested with the judicial function, or the adjudication of controversies brought before the court in the form of cases; the administrative function, or the keeping of the administration of justice efficient, through the supervision and direction of the court system; and the rule making function, which should be given to the court exclusively, instead of being shared with the legislature as at present.

CIVIL SERVICE.

In order to eliminate the spoils system which now exists in the governments of state, county and city, examinations by a state civil service commission should be given to all candidates for purely clerical, technical, or minor administrative positions. The state civil service commission should be organized as a personnel agency, determining according to the latest and most approved methods the competence of candidates for such positions.

CONCLUSIONS.

The recommendations made in the preceding chapters would, it is well understood, involve fundamental changes in both our constitution and laws. Some such changes, however, seem to the authors inevitable if the state is to have a scientific, flexible and progressive government. Since these recommendations are based upon a through study of the governmental system of Oklahoma, have been tried successfully in other states, or have been advocated by the foremost political scientists and the most practical students

of other state systems, it is the hope of the authors that even if not all adopted, they will form a basis for a wide and intelligent discussion of the reorganization of state government.

INDEX

INDEX—THE GOVERNMENT OF OKLAHOMA.

Administration, State, suggested changes, 148-157, 660-662	
Governor's powers over.....	86-106
Administrative boards.....	141-143
Affairs, Board of.....	143-146
Agriculture, Board of.....	438-440
Education in.....	452-453
Animal quarantine, etc.....	440-442
Anti-trust law.....	402
Appropriations, provisions governing.....	387-390
Attorney General.....	89-90, 133-135
Attorney General's law.....	135, 532-534, 628-629
Auditor	129-133
Bank Commissioner.....	406
Banking, control over.....	405-409
State Department of.....	406-409
Blind, care of.....	508-509
Blue sky law.....	402-405
Boards, administrative.....	141-143
Board of Affairs.....	143-146
Budget, law of 1919.....	390-395
Budget System, criticism.....	395-400
Business, relation of.....	401-411
Charities and Corrections, Commissioner of.....	511-512
Children's Code Commission.....	497-498
Child labor.....	478-482
Cities, see municipal government,	
under legislative organization.....	555-563
home rule.....	563-564
City, legal control of State over, summary.....	619-625
Cities, organization, control over.....	626-628
officers, control over.....	628-630

election, control over.....	630-632
finances, control over.....	632-639
utilities, control over.....	639-640
criticism of control.....	642-650, 665-667
Constitution, general principles.....	9-12
direct control in.....	13-15
control of business in.....	15-17
protection of labor in.....	17-18
municipal control in.....	18, 20-23
amending	23-25
criticism of.....	25-34
suggested changes.....	655-662
Corporation Commission, organization.....	189-190
powers and jurisdiction.....	190-225
appeals from orders.....	226-228
criticisms and recommendations.....	228-229
control over utilities in cities.....	199-204, 605-611
County government.....	513-545
officers	516
finance	519-522
County government, proposed reorganization,.....	662-665
Courts, see Judiciary	
Justice of the Peace.....	158-164
County	168-169
District	169-171
Superior	171
Supreme	171-175
municipal	175-176, 587-603
criticisms and recommendations.....	176-186
Deaf, care of.....	508
Debt, State, constitutional provisions.....	376-378
State, present situation.....	378-386
Education, Survey Commission.....	498-499
criticism of.....	499-503

compulsory	475-476
of negroes.....	483-488
Election System, criticisms.....	269-272
general provisions.....	230-232
Elections, primary.....	235-257
general	257-269
municipal	269, 577-580
Examiner and Inspector.....	137-140
Excise Board, county.....	520-521, 632-635, 663
Executive officials.....	71-73
and courts.....	73-74
chief, see governor	
criticisms and recommendations.....	118-125
relation to legislature.....	658-660
Farm and industrial council.....	448, 449
Financial system, see:	
Revenue	
Taxation	
Funds	
Debt	
Budget	
Appropriation	
Excise Board	
Finance, municipal, control over.....	632-635
Fire Marshal.....	141
Funds, general.....	338-339
revolving	339-342
working capital revolving.....	342-344
pension	344-353
guaranty	353-355
home loan.....	355-360
from license fees, etc.....	361
free scholarship.....	361-362
text book.....	362

agency	362-370
highway construction.....	363
highway, federal aid.....	368-369
federal aid.....	363-370
agricultural and vocational.....	364-367
maternity and infant welfare.....	370
federal aid to highways.....	368-399
endowment	370-375
educational	370-374
common school.....	371-372
union graded school.....	372
new college.....	372-373
Section 13,.....	373-374
public building.....	374-375
Geological Commission and Survey.....	147-148
Governor, see Executive	
qualifications	74,
impeachment	75-78
powers in re legislation.....	79-86
veto power.....	82-84, Appendix A
budgetary powers.....	84
powers over administration.....	86-108
special powers.....	106-118
power over militia.....	106-110
pardon and parole power.....	110-116
Grandfather clause.....	231, 291, 301
Health, Board of.....	416-426
High schools.....	472-474
Highways, State.....	456-458
federal aid.....	459-460
Highway administration, general criticism.....	460-465
department	455

History of Oklahoma.....	1-9
Home rule in constitution.....	568-571
legislation	571-573
problems	573-619
charter procedure.....	574-576
organization	576-577
primary election laws.....	577-578
election system.....	578
initiative and referendum.....	578-579
and suffrage qualifications.....	579-580
and taxation.....	580-585
and bond issues.....	585-586
courts and penalties.....	587-603
public utility regulation	603-611, 639-640
education	611-613
health administration	613-614
highways and pavements.....	614-616
fire departments.....	616-617
labor regulation.....	618-619
Impeachment.....	75-77, and Appendix B
Initiative and Referendum bills voted on.....	289-302
general results.....	302-304
Initiative, procedure.....	275-281, 285-289
Insane and feeble minded.....	504-506
Insurance, regulation of.....	409-411
Issues Commission.....	403
Jury system.....	164-168
Justice of the Peace.....	158-164
Labor, child.....	478-482
Labor, regulation of.....	411-414
Department of.....	411-413
Commissioner of.....	411
strikes, etc.....	412
laws protecting.....	413
Land Office, Commissioners of.....	146

Legislature, powers and restrictions.....	39-45
committees	46-48
procedure	49-55
impeachment power.....	55-57
criticism	58-65
suggested reorganization.....	65-70
relation to Governor.....	658-660
Lieutenant Governor.....	78-79
Local government department, proposed.....	650-654, 665-667
Market Commission.....	449-450
Market associations, etc.....	450-452
Militia	106-110
Municipal government, towns,.....	551-555
cities under legislative orgnizations.....	555-563
home rule cities	563-654
powers of	565-654
Negroes, schools for.....	483-488
Oil and gas, conservation of.....	219-224
Oklahoma, history of.....	1-9
Pardon and parole.....	110-116
Penitentiary	506
Pension funds.....	344-353
firemen's	344-346
teachers'	346-353
Pensions, State, to Confederate veterans.....	510
Primary elections.....	235-257
Public Health, State Board	
in county	427-431
in city.....	431-432
general criticism.....	433-437
Public utilities in home rule cities.....	603-611
Rate fixing by Corporation Commission,.....	
	206-212, 214-215, 607-609
Referendum, procedure.....	281-289
bills voted on.....	289-302

MAY 4-1950

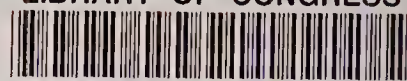
results	302-304
Reformatory and training schools.....	506-507
Registration of voters.....	232-235
Revenue, general provisions.....	305-313
Revenues from taxation.....	313-333
other sources.....	333
custody and disbursement.....	334-337
Schools, see Education	
School districts.....	467-471
Schools, public, curriculum.....	472-474
School finance.....	361-367, 490-495
Schools, special and higher.....	496-497
teachers	495-496
text books.....	488-490
Secretary of State.....	128-129
Sheppard-Towner bill.....	370, 418
Soldiers' homes.....	509-510
Taxation, in home rule cities.....	580-585
general provisions.....	305-313
criticism of system.....	332-333
Taxes, general property.....	313-318
express company.....	318
bank stock.....	318-319
corporation	319
public utility	320-322
mortgage	322
gasoline	322-323
gross production.....	323-324
income	324-326
inheritance	326-328
transportation and transmission.....	328-329
corporation license.....	329-330
motor vehicle.....	330-331
Fire Marshal.....	331
foreign insurance companies.....	331-332

Teachers	495-496
Textbooks	488-490
Textbook Commission.....	488-490, 501
Towns, organization and government of.....	551-555
Township	545-547
Treasurer	135-136
Tuberculosis Sanitoria.....	426-427
Utilities, public, in home rule cities.....	603-611
Venereal disease, control of.....	419-420
Voters, registration of.....	232-235
Voting, see election system	
in absence from home.....	231-232
Workmen's Compensation Law.....	413-414





LIBRARY OF CONGRESS



0 034 076 595 3